

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

Jason Carr, Vicki LeMaster, Edward Ford
Services LLC, Carlton Morgan, 365 Sun
LLC and Candice Worthy, *individually and
on behalf of all others similarly situated,*

Plaintiffs,

v.

Kabbage, Inc. d/b/a K Servicing,

Defendant.

Civil Action No. _____

**CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

Plaintiffs Jason Carr, Vicki LeMaster, Edward Ford Services LLC, Carlton Morgan, 365 Sun LLC and Candice Worthy, individually and on behalf of all others similarly situated, bring this Class Action Complaint and Demand for Jury Trial against Defendant Kabbage, Inc. d/b/a K Servicing (referred to herein as “Kabbage” or “K Servicing” depending on timeframe of reference) seeking declaratory judgment, injunctive relief and damages as a result of K Servicing’s abject and ongoing failure to discharge its duties and obligations as servicer of thousands of Small Business Association (“SBA”) Paycheck Protection Program (“PPP”) emergency loans by failing to timely and competently process PPP loan forgiveness applications. As and for their class action complaint, Plaintiffs allege the following based upon their personal knowledge and experiences and, where indicated, upon

information and belief, as well as based on due investigation conducted by their attorneys.

NATURE OF THE ACTION

1. In March of 2020, with the onset of the COVID-19 pandemic and its devastating impact on small businesses across the United States, Kabbage, an Atlanta-based financial technology lender, was likewise facing tremendous difficulties and had furloughed a “significant number” of its domestic team of 500 employees, closed its office in India, reduced executive compensation and paused its lending operations, anticipating the contraction of its customer base.

2. At the same time as it was taking these drastic measures, Kabbage was simultaneously lobbying the United States Treasury Department to gain inclusion as a loan originator in the Paycheck Protection Program (“PPP”), as it thought it could generate millions of dollars in origination fees, revive its floundering business and make itself an attractive acquisition target.

3. Turns out Kabbage was right about its ability to save itself, but sadly it had absolutely no intention or ability to actually service the hundreds of thousands of PPP loans it would be paid to originate.

4. In April of 2020, the United States Treasury Department announced that financial technology (“FinTech”) firms including Kabbage were authorized to originate loans to small businesses as a part of the United States government’s

CARES Act, the giant stimulus package which eventually would grow to include over \$800 billion in loan guarantees for small businesses.

5. In its effort to gain Treasury approval as a PPP lender, Kabbage rushed to frantically restructure its technology “in less than one week to allow potential borrowers to apply for the government-backed loans.” While its executives boldly (and frequently) proclaimed Kabbage to be the savior of small businesses, it never applied the same ingenuity or competence when it came to actually servicing the PPP loans it originated.

6. Kabbage has touted the relatively modest size of loans for which it processed initial loan applications as a sign of its dedication to the smallest, most vulnerable businesses, yet there was a direct financial incentive for Kabbage to service these small loans. Under the rules of the PPP program, lenders earn the highest percentage fees on loans under \$350,000.

7. By the end of the first two funding rounds in early August 2020, Kabbage had issued the second-largest number of PPP loans in the country.

8. All told, Kabbage received between \$330 million and \$340 million in fees on \$7 billion in approved PPP loans, and in doing so caught the eye of American Express, which agreed to acquire most of Kabbage’s assets for \$850 million in 2021. American Express is quick to make it clear though that it did not acquire the PPP

loan servicing arm, which was promptly renamed K Servicing in an effort to make it appear like a separate entity.

9. Kabbage’s “redemption” story is very far from a feel-good affair. While Kabbage was once just as imperiled as the small businesses that it is brazenly professes to serve, the federal bailout program aimed at rescuing its customer base ended up having the perverse effect of being the lender’s salvation and pushing the borrowers closer to financial ruin.

10. The newly orphaned company, K Servicing (which is the “d/b/a” of Kabbage) was left completely bereft of competent employees and necessary resources to properly service the hundreds of thousands of loans for which Kabbage had already received hundreds of millions of dollars in fees.

11. Despite its clear ineptitude, Kabbage inexplicably elected *not* to participate in the Small Business Administration’s Direct Borrower Forgiveness Portal, a streamlined Portal for processing borrower loan forgiveness applications for all PPP loans of \$150,000 or less. Upon receipt of notice that a borrower has applied for forgiveness through the Portal, lenders can immediately review the loan forgiveness application and issue a forgiveness decision to SBA.

12. K Servicing’s decision not to participate in the SBA’s Direct Borrower Forgiveness Portal would be excusable *if* it actually could and did process loan

forgiveness applications in a timely and competent manner. Sadly, it has continuously failed to do so.

13. Plaintiffs and Class members have faced tremendous (and avoidable) uncertainty and stress—not to mention wasted hundreds and hundreds of hours of time, and in some cases precious financial resources—with K Servicing’s “customer service,” being asked to provide documentation above and beyond what the SBA’s regulations actually require, being asked to provide documentation that they previously submitted (multiple times), receiving apparently fraudulently altered documents that contain inaccurate information about their loans and requested forgiveness amounts, and being asked to make payments on loans that should have been forgiven long ago, among many, many other issues.

14. The SBA’s Interim Final Rules require servicers to make a determination on a loan forgiveness application within sixty days, as well as to do so in good faith. However, K Servicing routinely failed to respond at all within that mandated timeline and, if it did respond, it did so merely to demand (again and again) irrelevant and non-existent documentation ostensibly in hopes of re-starting the sixty-day clock.¹

¹ In or about December of 2020, and as experienced by many of the representative Plaintiffs, Kabbage—despite professing to possess the requisite technical capabilities to service these PPP loans—basically outsourced the creation and maintenance of a new portal (its current one was, of course, not working) for processing forgiveness applications. PPP borrowers whose loans were serviced by

15. Particularly concerning is that oftentimes K Servicing would deny a forgiveness application but then immediately send the borrower a pre-populated forgiveness application with the requested forgiveness amount set to \$0.

16. Due to K Servicing's ongoing obstruction of the SBA-mandated forgiveness process, many of its small business owner customers have become trapped in a frustrating maze, being bounced between the SBA, the funders of the loans and K Servicing's off-shore "customer service."

17. There are approximately 350,000 PPP loans made to small businesses in 2020 during the Covid-19 pandemic that have not been forgiven, and most of them are for less than \$25,000. And, of the top 2020 PPP lenders, Kabbage has—far and away—the lowest forgiveness rate at 54%.²

18. To make matters worse, the most recent SBA data finds that PPP loan forgiveness rates have been significantly lower for small businesses that are based in majority Black and majority Hispanic ZIP codes, forcing minority entrepreneurs

Kabbage could not access the new (or old) portal, provide documents or otherwise check on the status of the forgiveness applications for several months, well in excess of the 60-day time period mandated by the SBA.

² *Small Businesses Still Face \$28 Billion of Unforgiven PPP Loans, That lingering debt is creating a burden for the smallest businesses, including many run by minority entrepreneurs*, BLOOMBERG EQUALITY CAPITAL, Amy Yee & Andre Tartar (Feb. 17, 2022).

to experience yet another layer of difficulty in pursuing the forgiveness to which they are entitled.

19. The ongoing impact of Kabbage's sheer incompetence cannot be overstated; simply put, the lingering debt of outstanding PPP loans—about \$28 billion—is creating a burden for the smallest businesses, including many run by minority entrepreneurs.³

20. Small businesses, like the Representative Plaintiffs in this case, provide almost half of all jobs in the United States and create nearly two-thirds of all new jobs.⁴

21. Kabbage's avarice, evidenced by its rush to process as many loans as possible and thereby rack up origination fees at the highest rates, continues to crush these small businesses, which were already facing their most challenging years to date.

³ See *PPP loans were made to be forgiven. In heavily Black areas like South Florida, many aren't*, MIAMI HERALD, BLOOMBERG EQUALITY CAPITAL, Ben Wieder (March 24, 2022) (noting that most PPP lenders have forgiveness rates at or above 90%).

⁴ See February 17, 2022 Letter from Center for Responsible Lending to The Honorable Janet Yellen, Secretary of the Treasury, *et al.*, “asking the SBA, the U.S. Treasury and Congress to take steps to help small business owners with outstanding PPP, including by automatically forgiving those of \$25,000 or less,” available here <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-coalition-letter-to-congress-sba-ppp-forgiveness-17feb2022.pdf>, last visited March 29, 2022.

22. For the hundreds of thousands of borrowers who utilized Kabbage for the funding and servicing of their PPP loans, it is understandably hard to countenance the unmitigated gall of Kabbage's then-CEO Rob Frohwein when he stated that "[t]he smallest businesses in America are always the hardest hit, the most vulnerable and the most in need when a crisis strikes, and together with our bank partner, we are working tirelessly to support them. We have the technology to respond to this national crisis and provide equal opportunity to the millions of business owners seeking relief." Yet the process of seeking loan forgiveness for Kabbage's borrowers has proved the exact opposite.

23. Simply put, Kabbage is one of the most opportunistic profiteers to emerge from the COVID-19 global pandemic. Yet, despite its own financial gain, Kabbage has so badly mismanaged the SBA PPP loan forgiveness process that it has financially and emotionally devastated the very people Congress intended to help.

THE PARTIES

A. Representative Plaintiffs

24. Plaintiff Jason Carr is a resident of Forsyth County, North Carolina.

25. Plaintiff Vicki LeMaster is a resident of Miami-Dade County, Florida.

26. Plaintiff Edward Ford Services LLC is a Michigan Limited Liability Company, with its principal address in Belleville, Michigan. DeJuan Ford is a

citizen of Michigan and is the sole and managing member of Edward Ford Services LLC.

27. Plaintiff Carlton Morgan is a resident of Los Angeles County, California.

28. Plaintiff 365 Sun LLC is a Florida Limited Liability Company, with its principal place of business in Palmetto, Florida. Lance Thompson is a citizen of Florida and is the sole and managing member of 365 Sun LLC.

29. Plaintiff Candice Worthy is a resident of Chatham County, Georgia.

B. Defendant

30. Defendant Kabbage, Inc. d/b/a K Servicing is an online financial technology company incorporated in the State of Delaware with its principal place of business in Atlanta, Georgia. Defendant Kabbage, Inc. d/b/a/ K Servicing is a citizen of Georgia.

JURISDICTION AND VENUE

31. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d) because at least one Class member is of diverse citizenship from Defendant, there are more than 100 Class members nationwide and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

32. This Court has general personal jurisdiction over Defendant because it has its principal place of business in Atlanta, Georgia. Defendant is a citizen of Georgia. Minimal diversity requirement of CAFA is met.

33. This Court has specific personal jurisdiction over Defendant because a substantial part of the actions or omissions giving rise to Plaintiffs' claims occurred in this judicial district.

34. The exercise of specific personal jurisdiction over Defendant is consistent with due process as Defendant has voluntarily subjected itself to the jurisdiction of this Court, regularly transacts business within this judicial district, has purposefully availed itself of the jurisdiction of this Court for the specific transactions at issue and is domiciled in Georgia, with its principal place of business located in Atlanta, Georgia.

35. Venue is proper in the Northern District of Georgia pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this action occurred in this District.

36. Venue is also proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the Court has personal jurisdiction over Defendant and Defendant has sufficient contacts with this District.

FACTUAL BACKGROUND

A. Overview of SBA's PPP Loan Program

37. In what was intended to be a much-needed emergency lifeline for millions of Americans struggling through an unprecedented global pandemic, the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”) was signed into law on March 27, 2020.⁵

38. The CARES Act established the SBA PPP, which was initially tasked with providing up to \$349 billion in funding for loans to entities including small businesses, certain nonprofit organizations, sole proprietorships, independent contractors and self-employed individuals to see them through the economic upheavals brought on by the global public health crisis.⁶

39. The PPP loans were to be administered using the existing SBA 7(a) loan guaranty program, but with key differences intended to expedite the intended relief for qualified borrowers, who were desperate to keep their businesses afloat and, to the extent possible, to maintain day-to-day operations.

40. The PPP loans could be used to cover qualified payroll costs, rent, utilities and interest on mortgage and other debt obligations in an effort to allow

⁵ See Pub. L. 116-136.

⁶ Some of the more salient features of the PPP loans are that they came with a 100% SBA loan guarantee, there were no borrower fees, a 1% interest rate, a two-year term and any loan repayment obligation was deferred for six months. See, U.S. TREASURY, *PAYCHECK PROTECTION PROGRAM (PPP) INFORMATION SHEET: BORROWERS*, available at <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>, last accessed March 22, 2022.

borrowers to maintain pre-COVID-19 employment numbers and compensation levels as nearly as possible.

41. The first round of PPP loans totaling \$349 billion were to be distributed on a first-come, first-serve basis through June 30, 2020.

42. Traditional lending institutions began processing loan applications immediately in early April and the initial \$349 billion set aside by Congress (“Round One”) was completely exhausted by April 16, 2020.

43. Just over a week later, on April 24, 2020, Congress provided an additional \$310 billion for the PPP in H.R. 266, the Paycheck Protection Program and Health Care Enhancement Act (“Round Two”).

44. Round Two of funding for the First Draw ran through August 8, 2020, at which time approximately \$134 billion in PPP funds remained undisbursed.

45. The Consolidated Appropriations Act, 2020 (the “CAA”) was signed into law on December 27, 2020, and included, once again, \$284 billion for the PPP program (“Round Three” of funding the program, the “Second Draw” for borrowers).⁷

⁷ The CAA also rescinded the money that had remained in the program at the end of Round Two, simultaneously increasing and decreasing the funds available to the program on re-authorization.

46. The SBA opened this “Second Draw” of the PPP loans on Monday January 13, 2021, with a period where access to the program would only be possible for community-centered small businesses and those owned by minorities (the Second Draw was later opened to all who qualify).⁸

47. On May 5, 2021, the SBA announced that all funds for the PPP as a whole – over \$800 billion – had been nearly exhausted, except for a small amount of funding previously set aside for community-based small businesses and minority borrowers.⁹

B. FinTech Companies, including Kabbage, Lobby to Participate in the PPP Program

48. The first of many Interim Final Rules (“IFR”) enacted by the SBA allowed for the United States Treasury to approve of Additional Lenders, in addition to previously qualified SBA section 7(a) lenders.¹⁰

⁸ SMALL BUSINESS ASSOCIATION bulletin, *PPP Re-Opens to First Time Borrowers TODAY; Second Draw Applications Accepted on January 13th!* (January 11, 2021, 5:58 PM), <https://content.govdelivery.com/accounts/USSBA/bulletins/2b591e6>, last accessed March 22, 2022.

⁹ Carmen Reinicke, *Paycheck Protection Program has run out of money for most borrowers. What you need to know*, CNBC.COM (May 5, 2021, 3:43 PM), <https://www.cnbc.com/2021/05/05/ppp-has-run-out-of-money-for-most-borrowers-what-to-know.html>, last accessed March 22, 2022.

¹⁰ See Federal Register Vol. 85, No. 73.

49. This initial IFR also established that the SBA would hold harmless any lender for borrowers that failed to comply with program criteria, effectively granting immunity to lenders for any fraudulent applications and incentivizing more potential lenders to begin distributing the PPP loans.

50. Financial technology companies (“FinTechs”) “lobbied federal officials hard to participate in emergency lending,” and in April 2020 several FinTech lenders, including Kabbage, were approved to distribute the SBA PPP loans.¹¹

51. In its effort to gain Treasury approval as a PPP lender, which proved successful, Kabbage frantically rushed to restructure its technology “in less than one week to allow potential borrowers to apply for the government-backed loans.”¹²

¹¹ See John Reosti, Penny Crosman, *Fintechs OK’d to make emergency small business loans*, AMERICAN BANKER (April 13, 2020, 6:02 PM), <https://www.americanbanker.com/news/fintechs-okd-to-make-emergency-small-business-loans>. See also, Sarah Perez, *PayPal, Intuit & Square approved to offer loans to small businesses through coronavirus relief program*, TECHCRUNCH (April 13, 2020, 12:29 PM), <https://techcrunch.com/2020/04/13/paypal-intuit-square-approved-to-offer-loans-to-small-businesses-through-coronavirus-relief-program/>, last accessed March 22, 2022.

¹² *Kabbage Partners with SBA-Authorized Bank to Deliver Paycheck Protection Program Loans to Small Businesses*, BLOOMBERG.COM (April 7, 2020, 10:48 AM), <https://www.bloomberg.com/press-releases/2020-04-07/kabbage-partners-with-sba-authorized-bank-to-deliver-paycheck-protection-program-loans-to-small-businesses>, last accessed March 22, 2022.

52. By mid-April of 2020, the federal government officially approved several FinTech companies to participate in the PPP by processing loan applications.¹³

53. Kabbage likely lobbied for its own inclusion in the PPP program because it thought it could generate millions of dollars in origination fees, revive its floundering business and make itself an attractive acquisition target. Yet Kabbage had no realistic intention of servicing the hundreds of thousands of small dollar PPP loans it distributed.

54. Still, Kabbage was approved as a lender, and the first IFR mandated that “[l]enders must comply with the applicable lender obligations set forth in this interim rule.”¹⁴

55. Kabbage both issued PPP loans as an SBA-authorized lender as well as in partnership with other approved SBA Lenders, serving as the originator for lenders such as Customers Bank and Cross River Bank.¹⁵

¹³ Brian P. Coughlan, Carolee Anne Hoover & Molly M. White, *Update – Fintech Lenders Approved to Participate in the Paycheck Protection Program*, MCGUIREWOODS (April 14, 2020), <https://www.consumerinsights.com/2020/04/update-fintech-lenders-approved-to-participate-in-the-paycheck-protection-program/>, last accessed March 22, 2022.

¹⁴ Federal Register Vol. 85, No. 73.

¹⁵ Ben Wieder, *Unforgiven: Two Years later, small businesses still waiting for promised PPP loan forgiveness*, Miami Herald (March 8, 2022), attached as Group Ex. A.

C. Kabbage Was Nearly Bankrupt by the Onset of COVID-19; Being Selected to Originate and to Service PPP Loans Ended Up Being Its Salvation.

56. Kabbage is (or was) a financial technology (aka “FinTech”) company that initially launched in May 2011.

57. Kabbage’s business model included using machine learning to evaluate loan applications, which it would later pitch as a perfect match for small business owners who needed access to capital quickly.

58. According to its co-founder and former COO, Kathryn Petralia, Kabbage “pioneered 21st century business financing by collapsing the time it takes to obtain a loan from weeks to a few minutes.”¹⁶

59. But by March of 2020, with the onset of the COVID-19 pandemic and its devastating impact on small businesses across the United States, Kabbage itself was on the verge of collapsing and had furloughed a ‘significant number’ of its US team of 500 employees, closed its office in Bangalore, India, reduced executive compensation, and paused its lending operation, anticipating the contraction of its customer base.¹⁷

¹⁶ KABBAGE, *Kabbage Closes \$50 Million Series D Led by Softbank Capital* (May 5, 2014), <https://newsroom.kabbage.com/news/company/kabbage-closes-50-million-series-d-led-by-softbank-capital/>, last accessed March 22, 2022.

¹⁷ See Ari Levy, *How Kabbage saved its small business lending operation in the middle of the pandemic*, CNBC.COM (June 17, 2020, 11:03 AM), <https://www.cnbc.com/2020/06/17/kabbage-turned-to-doling-out-ppp-loans-to-save-its-lending-business.html>; see also Ingrid Lunden, *SMB loans platform*

60. As detailed below, the PPP program would provide Kabbage the opportunity to originate a tremendous number of loans and to receive hundreds of millions of dollars in loan origination fees.

D. Kabbage Receives Massive Fees for Originating PPP Loans and, in turn, Is Acquired by American Express for Nearly a Billion Dollars.

61. With the rapid onset of the COVID-19 pandemic, the demand for PPP loans was so high that traditional banks quickly became overwhelmed and often prioritized existing customers with whom they had preexisting financing relationships.

62. Kabbage boasted about the ability of its technology to turn around loan applications in record time and using a fully automated process, with 75% of overall loans (and 90% of self-employed loans) being approved with no human interaction.¹⁸

63. Kabbage's median time from application to approval was only 4 hours.¹⁹

Kabbage to furlough a 'significant' number of staff, close office in Bangalore, TECHCRUNCH (May 30, 2020), <https://techcrunch.com/2020/03/30/smb-loans-platform-kabbage-to-furlough-a-significant-number-of-staff-close-office-in-bangalore/>, last accessed March 22, 2022.

¹⁸ KABBAGE, *Kabbage PPP Results: A Historic Feat for FinTech* (Updated as of August 8, 2020), <https://newsroom.kabbage.com/wp-content/uploads/2020/07/Kabbage-Paycheck-Protection-Program-PPP-Report.pdf>, last accessed March 22, 2022.

¹⁹ *Id.*

64. Co-founder and then-CEO of Kabbage Rob Frohwein was quoted in the press reassuring understandably nervous and anxious small business owners, “[t]he smallest businesses in America are always the hardest hit, the most vulnerable and the most in need when a crisis strikes, and together with our bank partner, we are working tirelessly to support them.”²⁰

65. And, while that sentiment certainly sounds nice in a press release, the truth of the matter could not be farther from those words. In short, Kabbage has not come close to supporting the smallest businesses in America. In fact, it has intentionally turned on its back on them and left them to fend for themselves after piling up its ill-deserved origination fees and was acquired by American Express.

66. The banks and FinTech companies that participated in the PPP program received significant fees for originating loans. Those entities were paid a fee, on a sliding scale based on the size of the loan, for each application they pushed through.

²⁰ *Supra*, n. 12, *Kabbage Partners with SBA-Authorized Bank to Deliver Paycheck Protection Program Loan to Small Businesses*, BLOOMBERG.COM (April 7, 2020, 10:48 AM), <https://www.bloomberg.com/press-releases/2020-04-07/kabbage-partners-with-sba-authorized-bank-to-deliver-paycheck-protection-program-loans-to-small-businesses>, last accessed March 22, 2022.

67. After the First Draw of PPP loan funding was exhausted, SBA lenders had “earned billions of dollars in fees from processing over 4.5 million PPP loans worth more than \$511 billion.”²¹

68. PPP Loans approved by Kabbage in 2020 alone generated more than \$145 million in fees.²²

69. Loans approved by partner banks Cross River and Customers generated an additional \$405 million.²³

70. By the end of the program’s extension in early August, Kabbage became the second-largest PPP lender in the country with nearly 300,000 approved applications that amounted to over \$7 billion in small business funding.²⁴

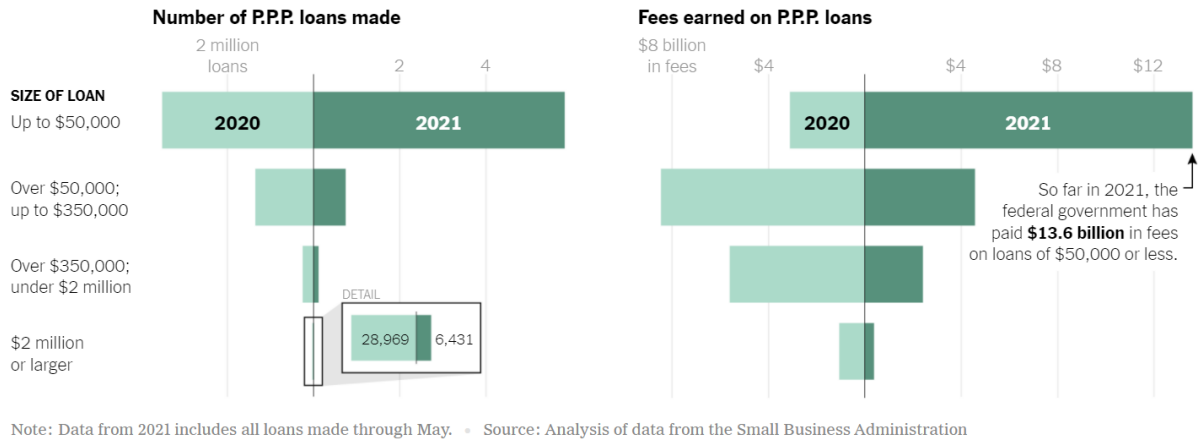
²¹ Robin Saks Frankel, *Banks Made Billions on PPP Loans. Learn What They’re Doing With The Cash*, FORBES (July 10, 2020, 8:51 PM), <https://www.forbes.com/sites/advisor/2020/07/10/banks-made-billions-on-ppp-loans-learn-what-theyre-doing-with-the-cash/?sh=581da9df7f2f>, last accessed March 22, 2022.

²² See Ben Wieder, *Unforgiven: Two Years later, small businesses still waiting for promised PPP loan forgiveness*.

²³ *Id.* (stating that “Kabbage and other FinTech companies typically processed the applications using their online systems and then put the loans on the books of their partner banks, splitting the fees”).

²⁴ Riley de Leon, *American Express acquiring small business lender Kabbage*, CNBC.COM (August 17, 2020, 4:33 PM), <https://www.cnbc.com/2020/08/17/american-express-acquiring-small-business-lender-kabbage.html>, last accessed March 22, 2022.

71. In an ironic twist, originators of the smallest loans to the smallest, most vulnerable businesses generated the most revenue for themselves based on origination fees:



Source: NEW YORK TIMES²⁵

72. Kabbage's participation in the PPP program turned out to be a lifeline not for struggling small businesses, but for *itself*.

E. Once Kabbage Made Millions on Origination Fees and Was Acquired, It Left a Shell of a Company Wholly Incapable of Servicing PPP Loans Behind.

73. Thanks largely to its newly minted hundreds of millions of dollars in fees, Kabbage became an attractive takeover target and American Express

²⁵ Stacey Cowley and Ella Koeze, *How Two Start-Ups Reaped Billions in Fees on Small Business Relief Loans*, THE NEW YORK TIMES (June 27, 2021), <https://www.nytimes.com/2021/06/27/business/ppp-relief-loans-blueacorn-womply.html?searchResultPosition=12>, last accessed March 22, 2022.

announced in August 2020 that it would acquire Kabbage for approximately \$850 million.²⁶

74. However, Kabbage's pre-existing loan portfolio – including all of the PPP loans it was servicing – was not included in the purchase agreement.²⁷

75. In announcing the acquisition, American Express went to great pains to say that it had acquired “substantially” all of Kabbage except for the PPP Loan servicing division, which would be re-named K Servicing:

What are the details of Kabbage's acquisition by American Express?

On 10/16/20, American Express acquired substantially all of Kabbage to expand support of businesses like yours with the backing of one of the most respected financial companies in the world. You can continue to access financial solutions offered by Kabbage, now an American Express Company—like payment processing, checking accounts and cash flow

²⁶ Luisa Beltran, *American Express Said to Be in Talks to Buy Kabbage for \$850 Million*, BARRON'S (August 11, 2020, 10:56 AM), <https://www.barrons.com/articles/american-express-said-to-be-in-talks-to-buy-kabbage-for-850-million-51597157814>, last accessed March 22, 2022.

²⁷ Ingrid Lunden, *Amex acquires SoftBank-backed Kabbage after tough 2020 for SMB lender*, TECHCRUNCH (August 17, 2020), <https://techcrunch.com/2020/08/17/amex-acquires-softbank-backed-kabbage-after-tough-2020-for-the-smb-lender/>; see also AMERICAN EXPRESS, *Acquisition Will Expand American Express' Digital Cash Flow Management Offerings for Small Businesses* (August 17, 2020), <https://about.americanexpress.com/all-news/news-details/2020/American-Express-to-Acquire-Kabbage/default.aspx>, last accessed March 22, 2022.

insights—at kabbage.com. Paycheck Protection Program (PPP) and outstanding Kabbage FundingTM loans will be managed by Kabbage, Inc. through K Servicing for Kabbage through a new [K Servicing site](#).

76. Instead, the loan portfolio previously belonging to the entity known as Kabbage was to be managed by a “new” entity known as K Servicing.

77. Almost overnight, K Servicing became the new point of contact for customers who had previously applied and had their loans disbursed by Kabbage (as well as those funded by Kabbage partner banks, Customers Bank and Cross River Bank).

78. In addition to servicing loans disbursed by Kabbage prior to its acquisition by American Express, K Servicing processed disbursements of “Second Draw” PPP loans.

79. Now that all PPP funding has been exhausted and it is tasked with the project of servicing loan forgiveness applications, K Servicing has left borrowers frustrated, confused and searching for answers as their businesses hang on by a thread.

80. Several media reports have detailed the enormous obstacles and difficulties that small businesses and individual borrowers have experienced as a result of Kabbage/K Servicing’s abject failure to timely and competently process loan forgiveness applications of its borrower clients:

- *Small Businesses Still Face \$28 Billion of Unforgiven PPP Loans, That lingering debt is creating a burden for the smallest businesses, including many run by minority entrepreneurs*, BLOOMBERG EQUALITY CAPITAL, Amy Yee & Andre Tartar (Feb. 17, 2022);
- *PPP loans were made to be forgiven. In heavily Black areas like South Florida, many aren't*, MIAMI HERALD, Ben Wieder (March 24, 2022);
- *Unforgiven: Two Years later, small businesses still waiting for promised PPP loan forgiveness*, MIAMI HERALD, Ben Wieder (March 8, 2022);
- *AmEx's purchase of online lender Kabbage left desperate PPP borrowers in the cold*, CNBC.COM, Ari Levy (April 7, 2021), available at <https://www.cnbc.com/2021/04/07/amex-acquisition-of-online-lender-kabbage-hurt-ppp-borrowers.html>.²⁸

81. As detailed below, borrowers have faced uncertainty and frustrating interactions with K Servicing's "customer service," being asked to provide documentation above and beyond what the SBA's regulations actually require, being asked to provide documentation that they previously submitted, receiving documents that contain inaccurate information about their financing and accounts, and being asked to make payments on loans that should have been forgiven long ago, among other things.

²⁸ A true and correct copy of each cited article is attached as Group Exhibit A hereto.

82. Over the past year, various FinTechs, including Kabbage, have attracted government scrutiny because they processed loans at high-speed using software that in some cases had glitches, causing errors in applications.²⁹

83. Other industry sources have said that FinTechs' use of automated lending platforms with few manual checks potentially caused errors to be replicated across thousands of loans.³⁰

84. Still, many business owners and entrepreneurs, including Plaintiffs and the putative class members, trusted Kabbage to assist them in obtaining legitimate government resources, to which they were fully entitled, in their time of need.

85. For these borrowers, what initially seemed like a saving grace has turned into a living nightmare.

F. The PPP Loan Forgiveness Process

86. The first IFR published in the Federal Register on April 15, 2020 outlined that PPP loan forgiveness was available up to the full principal amount of the PPP loan (and all accrued interest) if the entirety of the loan was utilized for approved expenses in the eight-week period following the date of the loan.³¹

²⁹ Koh Gui Qing & Pete Schroeder, *U.S. Justice Department probing Kabbage, fintechs over PPP loan calculations – sources*, REUTERS (May 7, 2021, 9:29 PM), <https://jp.reuters.com/article/us-health-coronavirus-usa-probe-idCAKBN2CP020>, last visited March 29, 2022.

³⁰ *Id.*

³¹ *See* Federal Register Vol. 85, No. 73.

87. That IFR stated, in response to the question, “Can lenders rely on borrower documentation for loan forgiveness?,” “Yes. The lender does not need to conduct any verification if the borrower submits documentation supporting its request for loan forgiveness and attests that it has accurately verified the payments for eligible costs.”³²

88. Over time the SBA would streamline these requirements, but even from the beginning lenders were tasked with accepting the verifications of their borrowers.

89. On May 18, 2020, the SBA released the first version of the borrower’s application for PPP loan forgiveness (Form 3508).³³

90. The SBA continued to release guidance with respect to the lender review process for loan forgiveness applications, including another IFR published in the *Federal Register* on June 1, 2020, which more formally established the Loan Review Procedures and Related Borrower and Lender Responsibilities (the “Loan Review Process IFR”).³⁴

³² See *id.*

³³ See SMALL BUSINESS ASSOCIATION, “Paycheck Protection Program Loan Forgiveness Application Revised June 16, 2020,” available at <https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.pdf>, last visited March 29, 2022.

³⁴ See Federal Register Vol. 85, No. 105.

91. The Loan Review Process IFR stated that the “lender must issue a decision to SBA on a loan forgiveness application not later than 60 days after receipt of a complete loan forgiveness application from the borrower.”³⁵

92. The Loan Review Process IFR also stated each lender must perform a good-faith review to “[c]onfirm the borrower’s calculations on the borrower’s Loan Forgiveness Application...by reviewing the documentation submitted with the Loan Forgiveness Application.”³⁶

93. If the lender discovered missing documents or incorrect calculations, the Loan Review IFR provided that the lender should work – again, in good faith – with the borrower to fix the problems.

G. SBA Streamlines the Forgiveness Process for PPP Loans Under \$150,000.

94. On June 5, 2020, H.R. 7010, the Paycheck Protection Program Flexibility Act of 2020 (“PPP Flexibility Act”) was signed into law, making several changes to the PPP including extending the covered period for making qualifying expenditures eligible for forgiveness from 8 to 24 weeks.³⁷

95. The PPP Flexibility Act also prompted the SBA to release a revised version of forgiveness application (Form 3508) to account for changes mandated by

³⁵ *See id.*

³⁶ *See id.*, 2.a.iii.

³⁷ *See* Pub. L. 116-142.

Congress, in addition to releasing an EZ loan forgiveness application (Form 3508EZ) requiring even fewer calculations and less documentation for certain borrowers.

96. The SBA began accepting PPP lender loan forgiveness submissions on August 10, 2020 and began issuing decisions on these submissions (and remitting funds to lenders) on or about October 2, 2020.

97. On October 8, 2020, the SBA released yet another forgiveness application for disbursed PPP loans of \$50,000 or less (Form 3580S).³⁸

98. This 3508S form was intended to “streamline[] the PPP forgiveness process to provide financial and administrative relief to America’s smallest businesses while also ensuring sound stewardship of taxpayer dollars.”³⁹

99. The SBA also released another IFR with a purpose of “allowing lenders to process forgiveness applications more swiftly” for loans of \$50,000 or less, including changes to the Loan Review Process IFR, simplifying the review process for lenders when a borrower submits the SBA Form 3508S to require the lender to do two things: (i) confirm receipt of the borrower’s certifications on the form and

³⁸ SMALL BUSINESS ASSOCIATION press release, *SBA and Treasury Announce Simpler PPP Forgiveness for Loans of \$50,000 or Less* (October 8, 2020), <https://www.sba.gov/article/2020/oct/08/sba-treasury-announce-simpler-ppp-forgiveness-loans-50000-or-less>, last visited March 29, 2022.

³⁹ *Id.*

(ii) confirm receipt of the documentation the borrower must submit to aid in verifying payroll and non-payroll costs.⁴⁰

100. Importantly, the IFR that corresponded with the SBA's release of Form 3508S no longer required lenders to confirm the borrower's calculations on the loan forgiveness application for loans of \$50,000 or less.

101. These changes were intended to reduce the amount of time and efforts spent by lenders on processing loan forgiveness applications for loans of \$50,000 or less.

102. In January of 2021, the SBA issued yet another revised PPP loan forgiveness application Form 3508S, which increased the loan amount for which the form could be used from \$50,000 to \$150,000.⁴¹

103. Again, this was done to drastically reduce the amount of time and effort lenders and borrowers were required to put into the loan forgiveness application review process.

104. In a corresponding IFR, the SBA stated that: "[a]n eligible borrower that received a loan of \$150,000 or less should use the SBA Form 3508S and **shall**

⁴⁰ See Federal Register Vol. 85, No. 202.

⁴¹ See SMALL BUSINESS ASSOCIATION, "Paycheck Protection Program PPP Loan Forgiveness Application Form 3508S Revised January 19, 2021," available at <https://www.sba.gov/sites/default/files/2021-01/PPP%20--%20Forgiveness%20Application%20and%20Instructions%20--%203508S%20%281.19.2021%29-508.pdf>, last accessed March 23, 2022.

not, at the time of its application for loan forgiveness, **be required to submit *any application or documentation*** in addition to the certification and information required by section 7A(I)(1)(A) of the Small Business Act.”⁴²

105. In sum, by early 2021, the revised Form 3508S was shortened to one page and no longer required the submission of supporting loan forgiveness documentation for loans of \$150,000 or less.

H. Despite Reducing its Loan Servicing Operations to a Skeletal and Incompetent Crew, Kabbage Inexplicably Elects Not to Participate in the SBA Direct Borrower Forgiveness Portal.

106. In July of 2021, the SBA announced it would be making available a Direct Borrower Forgiveness Portal as an alternative method for processing borrower loan forgiveness applications for all PPP loans of \$150,000 or less, *which accounted for nearly 93% of all PPP loans*.⁴³

107. When a PPP lender elects to participate in the Direct Borrower Forgiveness Portal, the Portal can provide a single secure location for all of its borrowers with loans of \$150,000 or less to apply for loan forgiveness through the Portal using the electronic equivalent of SBA Form 3508S.⁴⁴

⁴² Federal Register Vol. 86, No. 23 (emphasis added).

⁴³ See 13 CFR Part 120, available at <https://www.sba.gov/sites/default/files/2021-07/FINAL%20IFR%20Forgiveness%207.23.21-508.pdf>, last accessed March 23, 2022.

⁴⁴ *Id.*

108. Upon receipt of notice that a borrower has applied for forgiveness through the Portal, lenders can review the loan forgiveness application in the Portal and issue a forgiveness decision to SBA inside the Portal.

109. SBA was of the belief that lenders that opt-in to using the Direct Borrower Forgiveness Portal would benefit from reduced costs, increased efficiency and more timely remittance of forgiveness payments from SBA, while borrowers would benefit from the ability to submit loan forgiveness applications directly through the Portal and reduce the wait time and uncertainty associated with submission through their lender.⁴⁵

110. Kabbage, flush with cash from its acquisition by American Express, was seemingly unconcerned with actually assisting borrowers achieve forgiveness in the most expedient possible manner and did not elect to participate in the SBA's streamlined Portal.⁴⁶

111. To reiterate, Kabbage's participation in the SBA's PPP Program as a disbursing of small dollar loans was prolific.

⁴⁵ Jeff Drew, *SBA streamlines forgiveness process for most PPP loans*, JOURNAL OF ACCOUNTANCY (July 28, 2021), <https://www.journalofaccountancy.com/news/2021/jul/sba-streamlines-forgiveness-process-most-ppp-loans.html>, last accessed March 22, 2022.

⁴⁶ *Id.* The only reasons proffered by the lenders which elected not to participate (*i.e.*, Kabbage) was that they were concerned about the functionality of the SBA's direct borrower portal, a contention that is particularly suspect given the rampant failings of Kabbage/K Servicing and its servicing portals.

112. Kabbage ultimately became one of the largest PPP lenders in the country by volume of loans, with nearly 300,000 approved applications that amounted to over \$7 billion in small business funding.⁴⁷

113. Yet, despite all of its empty rhetoric and self-congratulatory press releases, the truth of the matter is that “Kabbage ... has the worst forgiveness of any major lender in the [PPP] program” (and its partner banks are close behind).⁴⁸

114. Only 54% of PPP loans originated by Kabbage in 2020 had been forgiven as of early January 2022, which pales in comparison to the overall forgiveness rate of non-Kabbage-serviced PPP loans (93%).⁴⁹

⁴⁷ See Ari Levy, *AmEx’s purchase of online lender Kabbage left desperate PPP borrowers in the cold*, CNBC.COM (April 7, 2021), attached as Group Ex. A; see also KABBAGE, *Kabbage PPP Results: A Historic Feat for FinTech* (updated as of August 8, 2020), available at <https://newsroom.kabbage.com/wp-content/uploads/2020/07/Kabbage-Paycheck-Protection-Program-PPP-Report.pdf>, last visited March 29, 2022.

⁴⁸ According to a Miami Herald analysis of loans approved in the first year of the program. Ben Wieder, *Unforgiven: Two Years later, small businesses still waiting for promised PPP loan forgiveness*, Miami Herald (March 8, 2022), attached as Group Ex. A.

⁴⁹ *Id.*

115. This makes it even more nonsensical that, despite more than doubling its customer base⁵⁰ after an earlier layoff,⁵¹ which would undoubtedly leave Kabbage scrambling to find a workforce to properly service the loans it disbursed, Kabbage refused to take advantage of SBA-created mechanisms for easing the loan forgiveness application review process.

116. Kabbage's haphazard entry into the market for PPP lending, processing as many loans as it could quickly as possible in order to generate massive origination fees in order to appear an attractive target for its eventual acquirer, American Express, is now creating severe consequences for its small business borrowers who are left holding the bag, spending hours upon hours being shuttled between Kabbage, its partner banks, K Servicing, its off-shore "customer service department" and the SBA.

I. Kabbage Is Unwilling or Unable to Process Borrowers' PPP Loan Forgiveness Applications.

⁵⁰ Anna Hrushka, *Kabbage nearly doubles customer count through PPP participation*, BANKINGDIVE (July 2, 2020), <https://www.bankingdive.com/news/kabbage-customer-count-paycheck-protection-program/580982/>, last accessed March 22, 2022. As of July 2, 2020, Kabbage said it approved \$5.8 billion in PPP loans for 209,000 customers — 97% of whom are new to its platform.

⁵¹ *Supra*, fn. 17, Ingrid Lunden, *SMB loans platform Kabbage to furlough a 'significant' number of staff, close office in Bangalore*, TECHCRUNCH (May 30, 2020), available at <https://techcrunch.com/2020/03/30/smb-loans-platform-kabbage-to-furlough-a-significant-number-of-staff-close-office-in-bangalore/>, last accessed March 29, 2022.

117. Despite processing hundreds of thousands of initial PPP loan applications—which grossed Kabbage hundreds of millions of dollars in origination fees—on the back end, Kabbage has been unwilling or unable to process the loan forgiveness applications of its borrower clients.

118. While it is not clear whether Kabbage’s incompetence is intentional, in order to keep these loans on its books and thereby generate additional unwarranted servicing fees on top of unwarranted origination fees or merely negligent, the fact is Kabbage has basically gutted its loan services operations and has left the vast majority of its customers frustrated, anxious and scared that their PPP loans will not be forgiven.

119. Kabbage has refused to comply with SBA regulations on loan forgiveness and failed its borrower customers in (at least) the following ways:

- ***Failing to process customers’ applications within the 60-day turnaround time required by SBA regulations and failing to respond to customers for months at a time.***

120. Despite initially being approved for their relatively small loans (*e.g.*, \$3,000) in just hours, customers seeking forgiveness have waited several months, spent hundreds of hours on the phone and replied to countless emails asking them to (re)submit documents and paperwork that had already been provided or was simply

did not exist.⁵² When understandably frustrated borrowers did eventually reach customer service representatives at Kabbage/K Servicing and informed them that requested documents did not exist or were not applicable to their situation, the representatives told them “to make one up.”

121. One K Servicing customer wrote expressing a commonly held sentiment that while Kabbage was quick to issue loans it seemingly had no interest in actually servicing those very same loans: “They were fast to issue our ppp loan but it has been a year and I have not heard one word on our forgiveness application for our ppp loan. I have emailed and no response on how to move forward from here.”⁵³

- ***Changing customers’ submitted loan forgiveness applications, specifically, changing the “Requested Loan Forgiveness Amount” from the amount of the PPP Loan to be forgiven to “\$0,” and then requiring customers to sign these forged and inaccurate forms.***

122. A significant number of Kabbage borrowers report that at some point in their communications with K Servicing throughout the forgiveness process, K Servicing sent them a DocuSign version of their SBA forgiveness Form with the

⁵² Ben Wieder, *Unforgiven: Two Years later, small businesses still waiting for promised PPP loan forgiveness*, Miami Herald (March 8, 2022), attached as Group Ex. A.

⁵³ William G, Customer Review, BETTER BUSINESS BUREAU (Marcy 2, 2022), available at <https://www.bbb.org/us/ga/atlanta/profile/small-business-loans/k-servicing-0443-27469815/customer-reviews>, last visited March 29, 2022.

“Requested Loan Forgiveness Amount” wrongfully changed from the correct amount (the amount of the PPP Loan) to “\$0.00” and demanding the borrower sign and return this document.⁵⁴

- ***Repeatedly asking customers for unnecessary documentation (even after customers have remitted this wholly unnecessary documentation).***

123. K Servicing has repeatedly asked customers for unnecessary documentation including documents and information throughout the review process in order to stall the process, causing borrowers confusion, frustration and time loss.

124. For example, K Servicing has wrongfully demanded borrowers send in articles of incorporation, certificates of organization, voided checks, business utility bills, business lease agreements, business insurance agreements, personal utility bills, business tax returns, bank statements, and letters from banks for loans that the SBA streamlined to not require such documentation.⁵⁵

⁵⁴ u/offizstorz, Spoildtcangel, e2johnson, Ornery_Arm8176, InformationShort660, and Revolutionary-Row845, Original Post and Comments on *CLASS ACTION LAWSUIT AGAINST KSERVICING/KABBAGE for PPP LOAN FORGIVENESS AND DENIAL*, REDDIT, available at https://www.reddit.com/r/EIDLPPP/comments/ql2hpd/class_action_lawsuit_against_kservicingkabbage/, last accessed March 23, 2020. Several representative Plaintiffs experienced this practice firsthand. *See, infra*, ¶¶ 156, 172 & 186.

⁵⁵ rebelmantn, Wrong_Combination_17, Comments on *CLASS ACTION LAWSUIT AGAINST KSERVICING/KABBAGE for PPP LOAN FORGIVENESS AND DENIAL*, REDDIT, available at https://www.reddit.com/r/EIDLPPP/comments/ql2hpd/class_action_lawsuit_against_kservicingkabbage/, last accessed March 23, 2022.

125. At times the same unnecessary documentation has been “requested on more than 10 separate occasions” from the same borrower, if not more.⁵⁶

126. K Servicing has refused to work in good faith with borrowers to allow them to correct information that may have been wrongly reported due to the failings of its own software, instead telling a borrower that a correction could not be made one day after information was submitted and wrongly processed by its software, despite SBA regulations mandating PPP lenders work in good faith with borrowers through the forgiveness application process.⁵⁷

- ***Refusing to participate into the SBA’s Direct Borrower Forgiveness Portal, despite its knowledge of its own incompetence and technical shortcomings.***

127. Despite boasting about its technology for the purposes of processing initial PPP applications, Kabbage has experienced extreme difficulties with its loan forgiveness processing software, causing it to eliminate its existing loan forgiveness application processing platform multiple times, forcing borrowers to start the process over from scratch.⁵⁸

⁵⁶ *Id.*

⁵⁷ South-Apple-7694, Comment on *CLASS ACTION LAWSUIT AGAINST KSERVICING/KABBAGE for PPP LOAN FORGIVENESS AND DENIAL*, REDDIT, available at https://www.reddit.com/r/EIDLPPP/comments/ql2hpd/class_action_lawsuit_against_kservicingkabbage/, last accessed March 23, 2022.

⁵⁸ Wrong_Combination_17, Comment on *CLASS ACTION LAWSUIT AGAINST KSERVICING/KABBAGE for PPP LOAN FORGIVENESS AND DENIAL*, REDDIT, available at

128. Customers have repeatedly reported to K Servicing that its online dashboard is not working and they are unable to submit requested (albeit unnecessary, per SBA regulations) documents as part of the forgiveness process.

129. Despite knowledge of its own technology's shortcomings, Kabbage has refused to opt-in to the SBA's streamlined loan application forgiveness portal for loans of \$150,000 or less—for which the vast majority of Kabbage-issued loans would qualify.⁵⁹

130. One borrower reported in June of 2021: “I applied back in January and they ignored my application before shutting down the whole portal for the rest of the year!”⁶⁰

131. Another borrower reported in August of 2021: “KServicing opened a portal last Jan. and I applied but they closed it and said I would have to re-apply. Then they opened one with Biz2Credit in June and I sent in my applications again.

https://www.reddit.com/r/EIDLPPP/comments/ql2hpd/class_action_lawsuit_against_kservicingkabbage/, last accessed March 23, 2022.

⁵⁹ Sweet_Composer2437 and Rich-Narwhal2100, Comments on *CLASS ACTION LAWSUIT AGAINST KSERVICING/KABBAGE for PPP LOAN FORGIVENESS AND DENIAL*, REDDIT, available at https://www.reddit.com/r/EIDLPPP/comments/ql2hpd/class_action_lawsuit_against_kservicingkabbage/, last accessed March 23, 2022.

⁶⁰ biowiz, *Anyone Received an Email from KServicing about PPP1 Forgiveness Application?*, REDDIT, available at https://old.reddit.com/r/EIDLPPP/comments/nz9mtp/anyone_received_an_email_from_kservicing_about/, last accessed March 23, 2022.

It closed too and explained I would have to apply when they get their new site open. Now they claim they are close to having a new forgiveness portal, but they can't tell me when or where.”⁶¹

132. Still, another borrower stated in November of 2021: “August 2021 - After many calls, finally received Kservicing email stating that I could apply for PPP First Draw Loan forgiveness. Kservicing Portal allowed me to complete and Docusign Form 3508S. Sept 2021 - No response. Portal says forgiveness platform is launching soon. Called forgiveness hotline and was assured that I'd receive an email soon. They said they've ha[d] technical issues. Oct 2021 - No response. Portal says forgiveness platform is launching soon. Called forgiveness hotline and was assured that I'd receive an email soon. They said they've ha[d] technical issues. Nov 2021 - No response. Portal says forgiveness platform is launching soon. Called forgiveness hotline and was assured that I'd receive an email soon. They said they've ha[d] technical issues. I'm very worried as it says I have to start making payments in December. It sure seems like this is some sort of scam.”

⁶¹ *Deadline to Get Forgiveness About to Expire – K Servicing*, available at <https://www.socialgrep.com/search?query=k servicing>, last accessed March 23, 2022.

133. Despite opening and closing its own portal multiple times due to technical difficulties, K Servicing inexplicably *refused* to participate in the SBA's streamlined forgiveness application portal.

134. To date, over 1,400 lenders have opted into this portal in order to assist their small business customers in obtaining the relief they are entitled to.⁶²

- *Sending borrowers incorrect bills and past due statements to intimidate them into making payments on loans that should be forgiven or are in the process of forgiveness review.*

135. One customer relayed in early 2022: "I tried to apply for loan forgiveness on their website in March 2021, but they announced that they would use a different application. I have been waiting for months for that link to be sent to my email, but I have received none, unfortunately."⁶³

136. The customer's attempt to access K Servicing's portal was futile: "I found and tried to use the link <https://kservicingforgiveness.biz2x.com/login>, but it

⁶² See SMALL BUSINESS ASSOCIATION, *PPP lenders participating in direct forgiveness* (Effective September 23, 2021), downloadable list available at <https://www.sba.gov/document/support-ppp-lenders-participating-direct-forgiveness>, last accessed March 23, 2022.

⁶³ Capable-Ad90, Post *KSERVICING/KABBAGE 1st Payment is dues soon and PPP LOAN FORGIVENESS is nowhere to be found... PLEASE HELP*, REDDIT, available at https://old.reddit.com/r/EIDLPPP/comments/r1nome/kservicingkabbage_1st_payment_is_dues_soon_and/, last accessed March 23, 2022.

did not work. I have made numerous calls, but they all told me to wait and they are “trying” their “best.”⁶⁴

137. Yet, after 9 months of attempted contact and not hearing back from K Servicing regarding how to apply for forgiveness, the customer received a notification that payment on their loan was due: “In conclusion, my payment is due this month, and I have not received an email about the loan forgiveness application. Could anyone please give me any advice about what I should do? Should I make the first payment?”⁶⁵

- *Attempting (sometimes successfully) to collect on loans that should be forgiven.*

138. K Servicing has wrongfully attempted to collect on loans that should be forgiven, but for its incompetency in handling the loan forgiveness application process.

139. Some customers made payments upwards of thousands of dollars because K Servicing told them they were required to do so, until K Servicing later posted a statement on its website stating the *actual* SBA policy that payments are deferred until a forgiveness application is processed.⁶⁶

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Ornery_Arm8176, Comment on *CLASS ACTION LAWSUIT AGAINST KSERVICING/KABBAGE for PPP LOAN FORGIVENESS AND DENIAL*, REDDIT, available at

140. While a few customers that made these incorrect payments have been able to recoup some of the funds illegally obtained by Kabbage,⁶⁷ others have not.

141. As time passes, more and more borrowers are in danger of falling prey to Kabbage's collection tactics, feeling they must make payments to avoid long-term consequences to their credit.⁶⁸

CLASS REPRESENTATIVE EXPERIENCES

A. Jason Carr

142. Plaintiff Jason Carr is a resident and citizen of Forsyth County, North Carolina.

143. On July 15, 2020, Plaintiff Carr applied for a \$17,973.00 PPP loan through Kabbage.

144. At the time he applied, Carr submitted all required documentation including his tax returns, 1099s, bank statements, and a copy of voided checks, among other items.

https://www.reddit.com/r/EIDLPPP/comments/ql2hpd/class_action_lawsuit_against_kservicingkabbage/, last accessed March 23, 2022.

⁶⁷ See Group Ex. A, Wieder, *Unforgiven: Two Years later, small businesses still waiting for promised PPP loan forgiveness*, detailing a customer who repaid \$3500 of his \$14,000 PPP loan while he was in the middle of the forgiveness application review process.

⁶⁸ See, e.g., Group Ex. A, *Small Businesses Still Face \$28 Billion of Unforgiven PPP Loans, That lingering debt is creating a burden for the smallest businesses, including many run by minority entrepreneurs*, BLOOMBERG EQUITY CAPITAL, Amy Yee & Andre Tartar (Feb. 17, 2022).

145. On July 16, 2020, Carr's PPP loan application was approved in the amount of \$17,973.00.⁶⁹

146. On August 16, 2021, several months after other servicers were accepting and processing forgiveness applications, Kabbage informed Carr that he could apply for loan forgiveness.

147. Carr applied for forgiveness of his PPP Loan on August 19, 2021.

148. The 60-day window for K Servicing to make a determination regarding Carr's forgiveness passed in October 2021.

149. Carr did not hear anything regarding his loan forgiveness application from K Servicing until December of 2021.⁷⁰

150. According to Customers Bank, Carr's application was "prompted for additional review" whereupon K Servicing, on or about December 23, 2021, requested Carr to provide the following information: (i) Color copy of voided check; (ii) Business utility bills; (iii) Business lease agreement; (iv) Business tax returns; (v) Previous three month bank statements; (vi) Bank letter and (vii) IRS transcript.

⁶⁹ See "PPP Loan Data – Jason Russell Carr, Lewsville, NC," available at <https://www.federalpay.org/paycheck-protection-program/jason-russell-carr-lewisville-nc>, last accessed March 23, 2022.

⁷⁰ Notably, interest accrues on PPP loans from the date of funding so the delay in processing forgiveness applications has additional negative consequences for those borrowers who are ultimately denied forgiveness.

151. Carr is an independent contractor, and he therefore qualifies to apply for forgiveness using the 3508S short form, which does not require any forgiveness documentation *unless requested from SBA*.

152. K Servicing persisted in its attempts to force Carr to provide unnecessary (and, in some instances, non-existent) documentation.

153. For example, on December 27, 2021, K Servicing requested Carr to provide the following information: (i) Color copy of voided checks; (ii) Personal utility bills (*e.g.*, electric, gas, water) ; (iii) Previous three month bank statements; (iv) IRS EIN Documents and (v) Personal Lease Agreement.

154. In response, Carr informed K Servicing that he “has no personal leases, [and that he is] an independent contractor with no EIN document.”

155. Undaunted, K Servicing continued in its efforts to collect unnecessary and non-existent documentation and ultimately, on December 29, 2021, K Servicing declined Carr’s forgiveness application.⁷¹

156. After denying Carr’s application, K Servicing then sent Carr a forgiveness application with the forgiveness amount pre-populated as “\$0.00,” meaning that if Carr signed that document he would not be requesting forgiveness of any amount of his PPP loan.

⁷¹ Plaintiff Carr could not appeal K Servicing’s denial of his forgiveness application because only a determination by the SBA can be appealed, not one made by a servicer of a PPP loan.

157. Carr did not sign the pre-populated K Servicing PPP loan forgiveness form.

158. According to federalpay.org, the current status of Carr's \$17,973 PPP loan is "ongoing."

159. To make matters worse, in addition to attempting to collecting unnecessary documentation multiple times (which ostensibly re-started its 60-day clock under SBA guidelines) and then unjustly denying his forgiveness application, K Servicing has initiated collection efforts against Carr:

Dear Jason,

As previously indicated, your PPP Cares Act loan account is in breach of the SBA Note that you executed upon receipt of your PPP loan. As of today, your PPP loan account is two (2) payments past due.

Please note that if this loan is not repaid in full, the loan will be assigned to the SBA for the SBA to undertake its own collection activity, which can include referral of the loan to the Department of Treasury for further collection efforts.

Please log into your account to pay the past due amount immediately.

If you have filed an appeal of your Forgiveness decision, please notify us at pppforgiveness@kservicing.com.

Regards,

The KServicing Team

Current Balance: \$18,258.53

Total Due: \$1,284.62

Past Due: \$853.01

[Make a payment](#)

B. Vicki LeMaster

160. Plaintiff Vicki LeMaster is a resident of Miami-Dade County, Florida.

161. Plaintiff LeMaster applied for and received a modest \$3,000 PPP Loan in May of 2020.

162. Further to the terms of the PPP program, the loan would be forgiven if the funds were used for approved purposes, like rent or payroll.

163. As detailed in the Miami Herald article entitled “*Unforgiven: Two years later, small businesses still waiting for promised PPP loan forgiveness*,” the process of obtaining forgiveness of LeMaster’s loan has been incredibly flawed:

While it took just hours for LeMaster, who is an independent contractor, to get approved by Kabbage for her loan, ***the lender is now asking for the money back and her application for forgiveness has still not been approved seven months later.*** She said she’s spent hundreds of hours on the phone and replied to numerous emails asking her to resubmit documents and paperwork that she had already provided. Calls to the SBA for help got her nowhere.⁷²

C. Edward Ford Services LLC

164. Plaintiff Edward Ford Services LLC is a Michigan Limited Liability Company, with its principal address in Canton, Michigan.

165. On or about July 12, 2020, Plaintiff Edward Ford Services LLC was approved for a PPP loan in the amount of \$15,617.

166. In or about December of 2020, Plaintiff Edward Ford Services LLC applied for forgiveness with K Servicing for its PPP loan in the amount of \$15,617.

⁷² Group Ex. A, Wieder, *Unforgiven: Two Years later, small businesses still waiting for promised PPP loan forgiveness*.

167. In or about January 2021, Plaintiff Edward Ford Services LLC received various communications from K Servicing requesting it to provide additional, unnecessary and oftentimes non-existent documents.

168. Through Dejuan Ford, Plaintiff Edward Ford Services LLC attempted to contact customer service at K Servicing to discuss the fact that K Servicing kept requesting previously provided documents or documents that were not applicable to the borrower.

169. Plaintiff Edward Ford Services LLC was informed by K Servicing, at that time, given the pendency of Round 2 of PPP loans, that all forgiveness applications were on hold.

170. Plaintiff Edward Ford Services LLC was likewise informed that K Servicing was migrating its system to a new portal (whereupon he would have to re-apply).

171. In early November of 2021, Plaintiff Edward Ford Services LLC received an email from K Servicing informing that its forgiveness loan application was denied.

172. At or about that same time (November 2021), Plaintiff Edward Ford Services LLC received another forgiveness loan application from K Servicing; however, this loan application pre-populated the amount to be forgiven loan amount to “\$0.00.”

173. In November and December 2021, Plaintiff Edward Ford Services LLC, by and through Dejuan Ford, attempted to get any clarity regarding this new application.

174. Mr. Ford was informed that he should just sign that loan forgiveness application since it was up to the SBA in any event.

175. Despite the fact that Mr. Ford signed that loan forgiveness application (and despite the fact that he was seeking forgiveness of the full loan amount), K Servicing nonetheless sent several additional emails over the following months requesting Mr. Ford to sign the same forgiveness application.

176. As recently as March 1, 2022, Plaintiff Edward Ford Services LLC has received communications from K Servicing requesting that Mr. Ford complete the loan forgiveness application (which Mr. Ford completed and submitted on behalf of Plaintiff Edward Ford Services LLC in December of 2020).

177. K Servicing is now attempting to collect on the PPP Loan, representing that the first payment is due on or before March 15, 2022.

D. Carlton Morgan

178. Plaintiff Carlton Morgan is a resident of Los Angeles County, California.

179. On July 5, 2020, Morgan was approved for a PPP Loan in the amount of \$8,125.⁷³

180. In or about March 2021, Morgan applied for forgiveness using Kabbage's "Core Portal."

181. Plaintiff Morgan had to reach out and contact customer services representatives in order to find out any information regarding his forgiveness applications.

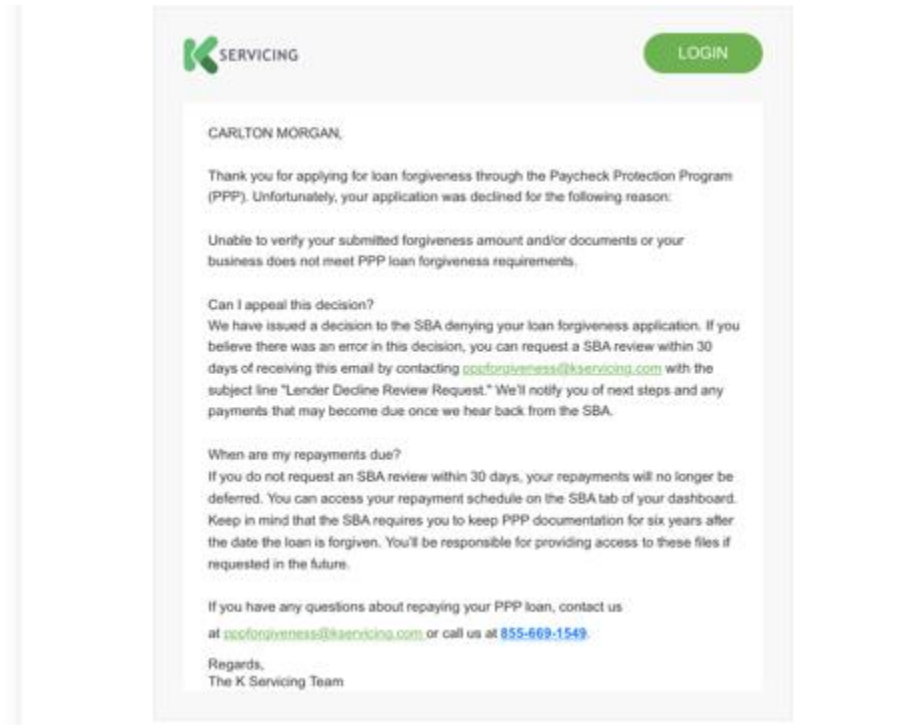
182. In the instances where he was able to connect with a live person, they informed him that Kabbage was not processing any forgiveness applications because of anticipated additional guidance from the SBA and/or that Kabbage was transitioning to a new portal from biz2credit and that would be operational "shortly."

183. Eventually the new Kabbage (biz2credit) portal was operational and Morgan re-applied for forgiveness in or about October of 2021.

184. While the application itself was straightforward, the "follow-up" from Kabbage/K Servicing to collect documents not required by SBA was relentless and eventually resulted in the supposed denial of his forgiveness application.

⁷³ See "PPP Loan Data – Carlton Morgan, Los Angeles, CA," available at <https://www.federalpay.org/paycheck-protection-program/carlton-morgan-los-angeles-ca>, last accessed March 23, 2022.

185. On or about December 20, 2021, Plaintiff Morgan received an email from K Servicing informing him that his forgiveness application had been denied because it had been “unable to verify” the information provided in his application:



186. Also, on or about December 20, 2021, Plaintiff Morgan then received a second email from K Servicing containing a pre-populated forgiveness application with the amount of the forgiveness request set to “\$0.00.”

187. Plaintiff Morgan has provided the same documentation multiple times.

188. Plaintiff Morgan was (and continues to seek) seeking forgiveness of the entire amount of his PPP Loan of \$8,125.

189. Despite the fact that SBA guidelines specify that borrowers do not owe any payments on PPP Loans unless and until a decision on a forgiveness request is rendered by the SBA, K Servicing is attempting to collect on a non-existent debt:

Dear Carlton,

Your PPP Cares Act Loan is past due. This failure to pay your scheduled repayment amount when due has resulted in a breach of the SBA Note you executed when you received your PPP Loan. Your account has been sent to our collections department. Escalated collections activity has begun, of which you may already have been notified.

Please note that if this loan is not repaid in full, the loan will be assigned to the SBA for the SBA to undertake its own collection activity, which can include referral of the loan to the Department of Treasury for further collection efforts.

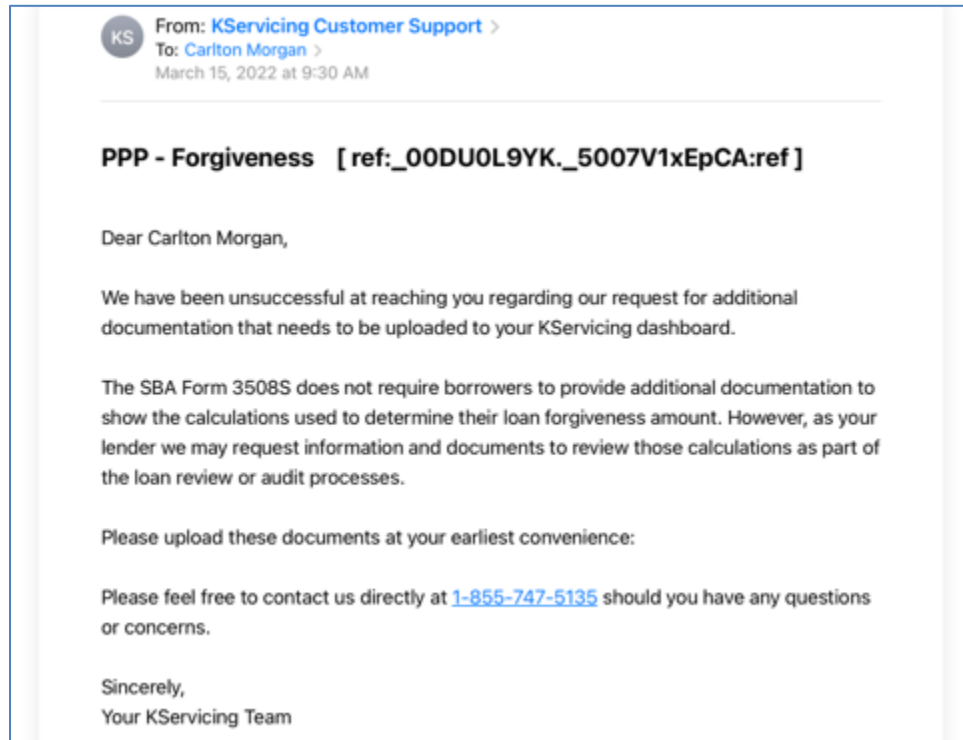
Please log into your account today and make a payment.

If you have filed an appeal of your Forgiveness decision, please notify us at pppforgiveness@kservicing.com.

Regards,

The KServicing Team

190. Even more perplexing is the fact that Plaintiff Morgan has received even more communications from K Servicing—*after* notifying him that his account is past due and has been sent to collections—indicating that they are still trying to review his loan for forgiveness:



191. To recap, at this time, K Servicing has simultaneously (i) told Plaintiff Morgan that they are unable to verify his information and that his loan is denied, (ii) sent him an altered loan forgiveness document, (iii) sent him a past-due notice in an effort to illegally collect on a debt that should not actually be due and (iv) told him that they are still requesting documents in order to process his forgiveness application. All the while, the funder of his loan (Customer's Bank) is saying that he should be able to receive forgiveness for his loan via the SBA Direct Borrower Forgiveness Portal. But alas K Servicing will not let him nor will it actually process his forbearance application.

192. As a result, Plaintiff Morgan has spent hundreds of hours on the phone and emailing K Servicing, lodging complaints with the BBB, reaching out to the SBA and Customer's Bank, all in an attempt to get K Servicing to process his application for forgiveness of his \$8,125 PPP Loan.

D. 365 Sun LLC

193. Plaintiff 365 Sun LLC is a Florida Limited Liability Company, with its principal place of business in Palmetto, Florida.

194. On or about May 1, 2020, Plaintiff 365 Sun was approved for a PPP loan in the amount of \$7,298.

195. In or about December of 2020, Plaintiff 365 Sun applied for forgiveness with K Servicing for its PPP loan in the amount of \$7,298.

196. On January 12, 2021, Plaintiff 365 Sun received an email from K Servicing informing that its "loan forgiveness application is now being reviewed."

197. Thereafter, on March 2, 2021, Plaintiff 365 Sun received an email from K Servicing stating that its loan forgiveness application had been reviewed and verified forgiveness amount of \$7,298.

198. Despite these acknowledgements and the fact that Plaintiff Sun 365 provided all documentation in connection with its forgiveness application in December of 2020, K Servicing continues to request previously provided or, in some cases, non-existent documentation.

199. K Servicing maintains that it was migrating all borrowers and forgiveness applications to a new (biz2credit) platform but then it waited several months before reaching out to Plaintiff 365 Sun regarding its long-pending application.

200. After numerous calls, K Servicing informed Plaintiff 365 Sun not to worry and that it should continue to wait while the new platform becomes operational.

201. Several months later, K Servicing then informs Plaintiff 365 Sun that it is past due on its PPP loan.

202. Unbelievably, in or about March of 2022, K Servicing sent Plaintiff 365 Sun an email with steps to begin the application for forgiveness process but true to form the link included in the email did not allow Plaintiff 365 Sun to access K Servicing's portal.

203. K Servicing is attempting to collect on Plaintiff 365 Sun's PPP Loan despite the fact that it has a long-pending forgiveness application.

F. Candice Worthy

204. Plaintiff Candice Worthy is a resident and citizen of Chatham County, Georgia.

205. On June 28, 2020, Worthy was approved for a PPP Loan in the amount of \$10,000.⁷⁴

206. In or about December 2020, Plaintiff Worthy initially applied for forgiveness for her PPP Loan.⁷⁵

207. In or about January 2021, Plaintiff Worthy re-applied for forgiveness for her PPP Loan.

208. Thereafter, Plaintiff Worthy was told to wait while the K Servicing portal was switched to the biz2credit portal and that she would be sent a link when it was operational and she could continue with her forgiveness application.

209. Despite the SBA's guidelines regarding PPP Loans under \$150,000 Plaintiff Worthy continues to receive communications from K Servicing's verification team requesting her to "upload documents."

210. Plaintiff Worthy, a self-employed independent contractor, has provided all pertinent documentation numerous times.

⁷⁴ See "PPP Loan Data – Candice Worthy, Savannah, GA," available at <https://www.federalpay.org/paycheck-protection-program/candice-worthy-savannah-ga>, last accessed March 23, 2022.

⁷⁵ Notably, Plaintiff Worthy applied for and received forgiveness for her second PPP Loan without delay. See "PPP Loan Data – Candice Worthy, Savannah, GA," available at <https://www.federalpay.org/paycheck-protection-program/candice-worthy-savannah-ga>, last accessed March 23, 2022.

211. Plaintiff Worthy has spent numerous hours on the phone and emailing K Servicing attempting to force them to process her loan forgiveness application, not to mention additional time spent working with the Better Business Bureau (“BBB”) in an attempt to get K Servicing to comply with its obligations under the PPP and the SBA guidelines.

212. Plaintiff Worthy has received emails from K Servicing requesting payment on her PPP Loan despite the fact that SBA guidelines specify that borrowers do not owe any payments on PPP Loans unless and until a decision on a forgiveness request is rendered.

CLASS ALLEGATIONS

213. Plaintiffs bring this complaint on behalf of themselves and all others similarly situated under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3).

214. The Nationwide Class that Plaintiffs seek to represent is defined as follows:

All borrowers of PPP loans in the amount of \$150,000 or less serviced by K Servicing for which the borrower has applied for but not received forgiveness of the entire amount of the PPP loan (the “Nationwide Class”).

215. In addition, Plaintiffs LeMaster and 365 Sun LLC seek to represent the following Florida Sub-Class:

All borrowers that are domiciled in the State of Florida with PPP loans in the amount of \$150,000 or less serviced

by K Servicing for which the borrower has applied for but not received forgiveness (the “Florida Sub-Class”).

216. In addition, Plaintiff Worthy seeks to represent the following Georgia Sub-Class:

All borrowers that are domiciled in the State of Georgia with PPP loans in the amount of \$150,000 or less serviced by K Servicing for which the borrower has applied for but not received forgiveness (the “Georgia Sub-Class”).

217. In addition, Plaintiff Morgan seeks to represent the following California Sub-Class:

All borrowers that are domiciled in the State of California with PPP loans in the amount of \$150,000 or less serviced by K Servicing for which the borrower has applied for but not received forgiveness (the “California Sub-Class”).

218. In addition, Plaintiff Carr seeks to represent the following North Carolina Sub-Class:

All borrowers that are domiciled in the North Carolina with PPP loans in the amount of \$150,000 or less serviced by K Servicing for which the borrower has applied for but not received forgiveness (the “North Carolina Sub-Class”).

219. In addition, Plaintiff Edward Ford Services LLC seeks to represent the following Michigan Sub-Class:

All borrowers that are domiciled in the State of Michigan with PPP loans in the amount of \$150,000 or less serviced by K Servicing for which the borrower has applied for but not received forgiveness (the “Michigan Sub-Class”).

220. Excluded from the Classes and Sub-Classes are Defendant's officers, directors and employees; the judicial officers and associated court staff assigned to this case and the immediate family members of such officers and staff.

221. **Numerosity:** The exact number of members of the Classes and Sub-Classes is unknown and is not available to Plaintiffs at this time; but, consistent with Rule 23(a)(1), the members of the Class are so numerous and geographically dispersed that joinder of all Class members is impracticable. Based on publicly available documents, each of the Classes likely numbers in the thousands or more; recent media reports note that "as of early January [2022], there were 349,372 unforgiven loans and another 380,000 that were partially forgiven."⁷⁶ Class members may be identified through objective means, notably, Defendant's records.

222. **Commonality and Predominance.** Consistent with Fed. R. Civ. P. 23(a)(2) and with 23(b)(3)'s commonality and predominance requirements, there are many questions of law and fact common to the claims of Plaintiffs and the other Class members, and those questions predominate over any questions that may affect individual members of the Classes. Common questions for the Classes include, without limitation, the following:

⁷⁶ See *Small Businesses Still Face \$28 Billion of Unforgiven PPP Loans, That lingering debt is creating a burden for the smallest businesses, including many run by minority entrepreneurs*, BLOOMBERG EQUALITY CAPITAL, Amy Yee & Andre Tartar (Feb. 17, 2022).

- A. Whether K Servicing negligently or intentionally failed to timely process thousands of PPP Loan forgiveness applications;
- B. Whether K Servicing's actions or inactions violated the consumer protection statutes invoked herein;
- C. Whether Plaintiffs, Class members, and Sub-Class members were damaged by K Servicing's conduct and, if so, the appropriate amount of such damages;
- D. Whether, because of K Servicing's misconduct, Plaintiffs, Class Members, and Sub-Class members are entitled to declaratory relief and, if so, the nature of such relief.

223. **Typicality:** Consistent with Fed. R. Civ. P. 23(a)(3), the representative Plaintiffs' claims are typical of the claims of the other members of the Classes and Sub-Classes. Plaintiffs and members of the Classes and Sub-Classes sustained damages as a result of Defendant's wrongful conduct in failing to timely process forgiveness applications for PPP Loans under \$150,000.

224. **Adequate Representation:** Consistent with Fed. R. Civ. P. 23(a)(4), Plaintiffs have and will continue to fairly and adequately represents the interests of the Classes and Sub-Classes, and have retained counsel competent and experienced in complex litigation and class actions. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the members of the Classes and Sub-Classes, and they have the resources to do so. Neither Plaintiffs nor their counsel have any interest adverse to those of the other members of the Classes and Sub-Classes.

225. **Superiority:** Consistent with Fed. R. Civ. P. 23(b)(3), class action litigation is superior to any other available means for the fair and efficient adjudication of this controversy. Individual litigation by each Class member would strain the court system because of the numerous members of the Class. This case is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy because litigation of the claims of all Class members and Sub-Class members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class members and Sub-Class members are likely in the millions of dollars, the individual damages incurred by each Class member are too small to warrant the expense of individual lawsuits. Even if members of the Classes and Sub-Classes themselves could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties and the Court and require duplicative consideration of the legal and factual issues presented herein. By contrast, a class action presents far fewer management difficulties and provides benefits of single adjudication, economy of scale, and comprehensive supervision by a single Court. Economies of time, effort, and expense will be fostered, and uniformity of decisions will be ensured.

226. K Servicing has, or has access to, address and/or other contact information for the Class members and Sub-Class members, which may be used to provide notice of the pendency of this action.

227. **Injunctive and Declaratory Relief.** Consistent with Fed. R. Civ. P. 23(b)(2), Defendant, through its uniform conduct, acted or refused to act on grounds generally applicable to the Class as a whole, making injunctive and declaratory relief appropriate to the class as a whole.

GEORGIA LAW SHOULD APPLY TO PLAINTIFFS AND ALL CLASSES AS A WHOLE, WITH THE EXCEPTION OF THE SPECIFIED SUB-CLASSES

228. The State of Georgia has a significant interest in regulating the conduct of businesses operating within its borders.

229. Georgia, which seeks to protect the rights and interests of Georgia and all residents and citizens of the United States against a company headquartered and doing business in Georgia, has a greater interest in the claims of Plaintiffs and the Classes than any other state and is most intimately concerned with the claims and outcome of this litigation.

230. The principal place of business and headquarters of Kabbage/ K Servicing, located at 925B Peachtree Street NE Suite 383, Atlanta, GA, 30309, is the “nerve center” of its business activities – the place where its high-level officers

direct, control and coordinate Defendant's activities, including major policy, financial and legal decisions.

231. Defendant's actions and corporate decisions surrounding the allegations made in the Complaint were made from and in Georgia.

232. Defendant's breaches of duty to Plaintiffs and Class members emanated from Georgia.

233. Application of Georgia law to the Classes with respect to Plaintiffs' and the Classes' claims is neither arbitrary nor fundamentally unfair because Georgia has significant contacts and a significant aggregation of contacts that create a state interest in the claims of Plaintiffs and the Classes.

234. Moreover, K Servicing's Terms of Service state that "[t]hese Terms of Service shall be governed by the internal substantive laws of the State of Georgia, without respect to its conflict of laws principles. Any claim or dispute between you and Kabbage, Inc. that arises in whole or in part from the Website or the Services shall be decided exclusively by a court of competent jurisdiction located in Atlanta, Georgia."⁷⁷

⁷⁷ KABBAGE, "Kabbage, Inc. Terms of Service," available at <https://www.kservicing.com/legal/tos/>, last accessed March 21, 2022.

235. Under Georgia's choice of law principles, which are applicable to this action, the common law of Georgia applies to the nationwide common law claims of all Class members.

236. Additionally, given Georgia's significant interest in regulating the conduct of businesses operating within its borders, and that Georgia has the most significant relationship to Defendants, as they are headquartered in Georgia, and their executives and officers are located and made decisions which have given rise to the allegations and claims asserted herein, there is no conflict in applying Georgia law to non-resident consumers such as Plaintiffs and the Classes.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Declaratory Judgment Further to the Declaratory Judgment Act, 28 U.S.C. § 2201

And Injunctive Relief

(On behalf of all Plaintiffs and the Nationwide Class)

237. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully set forth herein.

238. Under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, this Court is authorized to enter a judgment declaring the rights and legal relations of the parties and to grant further necessary relief. Furthermore, the Court has broad authority to restrain acts, such as here, that are tortious and violate the terms of the federal and state statutes described herein.

239. An actual controversy has arisen in light of the fact that the SBA has issued an Interim Final Rule streamlining the forgiveness application process for PPP Loans under \$150,000 should be forgiven and as a result of K Servicing's unwillingness and/or inability to process Plaintiffs' and the Class members' PPP Loan forgiveness applications, as detailed herein.

240. Plaintiffs maintain that K Servicing's processing of its borrower clients' PPP loan forgiveness applications for loans under \$150,000 remains inadequate.

241. K Servicing maintains that it is doing everything it can to support its small business clients.

242. Plaintiffs and the Class members continue to suffer injury as a result of K Servicing's inability to timely and accurately process the loan applications.

243. Plaintiffs and the Nationwide Class members seek a declaration, in accordance with the SBA regulations and pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, that:

- a. Defendant is obligated to review and to process loan forgiveness applications in good faith and within the 60-day time frame according to SBA regulations;
- b. Defendant is obligated to process PPP loan forgiveness applications for loans equal to or less than \$150,000 via Form

3508S, according to SBA regulations; and,

- c. that Defendants is obligated to process PPP loan forgiveness applications and may not require any documentation other than that explicitly required by SBA regulations.

244. This Court also should issue corresponding prospective injunctive relief requiring K Servicing to abide by SBA regulations for processing loans of \$150,000 and under, including, but not limited to, immediately ceasing to ask for documentation that is not required by SBA regulations and allowing borrowers to utilize the streamlined application process. If an injunction is not issued, Plaintiffs will suffer irreparable injury, and lack an adequate legal remedy. Plaintiffs will not have an adequate remedy at law because many of the resulting injuries are not readily quantifiable, and are not recoverable (time and effort), and they will be forced to bring multiple lawsuits to rectify the same conduct.

245. The hardship to Plaintiffs if an injunction does not issue exceeds the hardship to K Servicing if an injunction is issued as the “cost” to K Servicing of complying with an injunction by following SBA guidelines is minimal, and K Servicing has a pre-existing legal obligation to employ such measures.

246. Ironically, if K Servicing had elected to participate in the SBA’s Direct Borrower Forgiveness Portal, then many of the issues complaint about herein could

have been avoided. The “burden” of compelling K Servicing to comply with SBA guidelines and to timely process loan forgiveness applications is minimal.

247. Issuance of the requested injunction will not disserve the public interest. To the contrary, such an injunction would benefit the public by allowing many borrowers of PPP loans under \$150,000 to receive forgiveness of those loans, thus eliminating the additional injuries that would result to Plaintiffs and consumers in the future.

SECOND CAUSE OF ACTION

Unjust Enrichment (On behalf of Plaintiffs & the Nationwide Class)

248. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully set forth herein.

249. Unjust enrichment, or restitution, may be alleged where a defendant unjustly obtains and retains a benefit to the plaintiff’s detriment, where such retention violates fundamental principles of equity, justice and good conscience.

250. Here, Defendant has obtained hundreds of millions of dollars in benefits in the form of PPP loan origination fees not to mention, on information and belief, additional, undisclosed fees for servicing PPP loans.

251. Defendant would not have obtained this benefit but-for its small business customers (Plaintiffs and class members) that entrusted it to service their loans.

252. Defendant has fallen short in its duties as servicers for these PPP loans and have frustrated Congressional intent to aid small businesses during a global health crisis no less.

253. Because Defendant has been unwilling or unable to adequately service the plaintiffs' and class members loans, principles of justice, equity and good conscience demand that Defendant not be allowed to retain these fees.

254. Accordingly, Defendant should be ordered to disgorge the portion of any and all PPP origination fees that it has retained.

THIRD CAUSE OF ACTION

Cal. Bus. & Prof. Code §§ 17200, *et seq.* ("UCL") (On Behalf of Plaintiff Morgan & the California Sub-Class)

255. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully set forth herein.

256. Defendant is subject to the Unfair Competition Law ("UCL"), Business & Professions Code, §§ 17200, *et seq.*

257. The UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices..."

258. Defendant violated the "unlawful" prong of the UCL by violating California's Rosenthal Act, Cal. Civ. Code §§ 1788, *et seq.*, and the federal Fair Debt Collections Practice Act, 15 U.S.C. §§ 1692, *et seq.*

259. Defendant's conduct, described herein, violated the "unfair" prong of the UCL because Defendant's conduct was immoral, unethical, unscrupulous or substantially injurious to consumers and the utility of its conduct, if any, does not outweigh the gravity of the harm to its victims.

260. Defendant's conduct with respect to servicing the PPP loans it disbursed, including but not limited to its incompetence throughout the loan forgiveness application process for its borrowers, was unfair because it violates public policy, in that the very victims of its services were the small businesses that the SBA and Congress endeavored to help through PPP emergency loans.

261. Defendant's conduct with respect to servicing the PPP loans it disbursed, including but not limited to its incompetence throughout the loan forgiveness application process for its borrowers, was unfair because the consumer injuries are substantial, not outweighed by any benefits to consumers or competition, and none of Defendant's borrowers could have reasonably avoided falling victim to Defendant's failures.

262. Defendant's conduct, described herein, violated the "fraudulent" prong of the UCL.

263. A statement or practice is "fraudulent" under the UCL if it is likely to mislead or deceive the public, applying an objective reasonable consumer test.

264. The objective reasonable consumer would have been misled or deceived by Defendant's statements and representations regarding its abilities to carry out its obligations as a service of PPP loans and to process loan forgiveness applications in good faith, according to SBA regulations, and within the mandated time period contained therein.

265. Defendant profited from its misleading statements by inducing prospective borrowers to choose it as a loan disbursing and servicer, only later to be subjected to stress and unfair treatment throughout the loan forgiveness application process.

266. Defendant's conduct caused substantial injury to Plaintiff Morgan, and the other California Sub-Class Members. Plaintiffs have suffered injury in fact as a result of Defendant's unlawful, unfair and fraudulent conduct.

267. Plaintiff Morgan and California Sub-Class Members were damaged because they have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including but not limited to wasting hundreds and hundreds of hours of time, and in some cases precious financial resource, with K Servicing's "customer service," reapplying multiple times after K Servicing switched application portals, being asked to provide documentation above and beyond what the SBA's regulations actually require, being asked to provide documentation that they previously submitted (multiple times),

receiving documents that contain inaccurate information about their financing and accounts, and being asked to make payments on loans that should have been forgiven long ago.

268. In accordance with Bus. & Prof. Code § 17203, Plaintiff Morgan and the California Sub-Class seek an order enjoining Defendant from continuing to violate SBA regulations on processing loan forgiveness applications by refusing to adhere to the 60-day timeline and repeatedly requesting unnecessary documentation.

FOURTH CAUSE OF ACTION

Georgia Uniform Deceptive Trade Practices Act
Ga. Code Ann. §§ 10-1-370, *et seq.*
(On behalf of Plaintiff Worthy & the Nationwide Sub-Class)

269. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully set forth herein.

270. Defendant, Plaintiff Worthy and the Georgia Sub-Class Members are “persons” within the meaning of § 10-1-371(5) of the Georgia Uniform Deceptive Trade Practices Act (“Georgia UDTPA”).

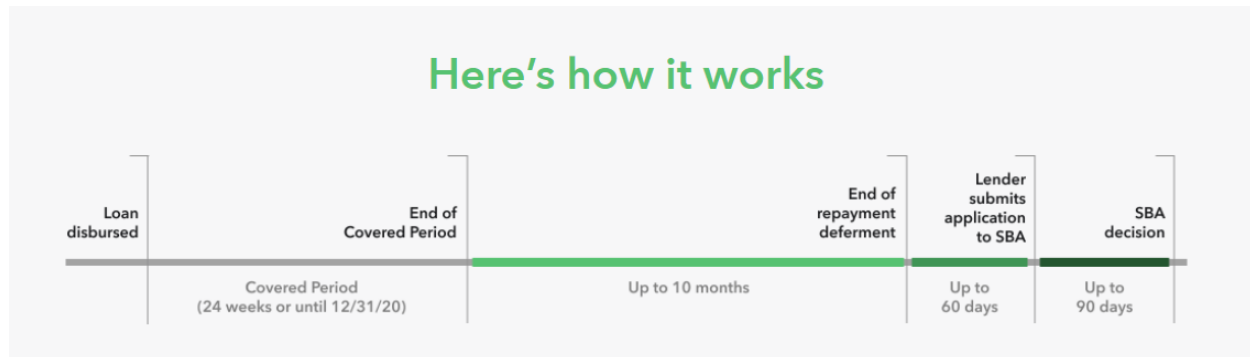
271. Defendant has engaged in deceptive trade practices in the conduct of its business, in violation of Ga. Code § 110-1-372(a), including:

- Representing that goods or services have characteristics that they do not have;
- Representing that goods or services are of a particular standard, quality, or grade if they are of another;

- Advertising goods or services with intent not to sell them as advertised and
- Engaging in other conduct that creates a likelihood of confusion or misunderstanding.

272. Defendant's deceptive trade practices include:

- Representing on its website under a section titled "Paycheck Protection Program (PPP) Loan Forgiveness" that customers will "enjoy the same great service and security you've come to expect with your line of credit – just through our new website."⁷⁸;
- Representing on its website, under a FAQ "When will I receive my forgiveness decision?", that "K Servicing has 60 days from receipt of a complete loan forgiveness application to issue a recommendation to the SBA, and the SBA is required to issue a decision within 90 days after the lender issues its recommendation to the SBA," indicating to customers that their loan forgiveness decisions would be finalized within 150 days.⁷⁹;
- Representing the loan forgiveness timeline with misleading visuals, including but not limited to:



⁷⁸ Kabbage, *Paycheck Protection Program (PPP) Loan Forgiveness*, available at <https://www.kservicing.com/ppp-loan-forgiveness/>, last accessed March 23, 2022.

⁷⁹ Kabbage, *Paycheck Protection Program (PPP) Loan Forgiveness*, available at <https://www.kservicing.com/ppp-loan-forgiveness/>, last accessed March 23, 2022.

Source: KABBAGE⁸⁰

- Representing on its website that “borrowers with loans under \$150,000 who qualify to use the new Form 3508S may not need to submit any supporting documentation,” but continuing to demand thousands of customers with loans under this threshold continue submitting unnecessary documentation.⁸¹;
- Representing on its website that only the following information was needed for loan forgiveness application, yet repeatedly requesting unnecessary documentation not included on that list, nor included in SBA regulations, from borrowers when they actually began the loan forgiveness application process:

⁸⁰ KABBAGE, *Paycheck Protection Program (PPP) Loan Forgiveness*, available at <https://www.kservicing.com/ppp-loan-forgiveness/>, last accessed March 23, 2022.

⁸¹ KABBAGE, *Paycheck Protection Program (PPP) Loan Forgiveness*, available at <https://www.kservicing.com/ppp-loan-forgiveness/>, last accessed March 23, 2022.

What do you need for your PPP Loan Forgiveness Application

The PPP Loan Forgiveness Application is extensive and detailed, so make sure you have the following on hand:

1. Your business's legal name, DBA, trade name and business TIN (EIN, SSN)
2. Your business's address, phone, primary contact, or email address that matches the info on your loan application
3. The SBA PPP loan number assigned by your lender
4. The lender's PPP loan number
5. Your PPP loan amount
6. The number of employees at the time of your loan application
7. The number of employees at the time of your forgiveness application
8. The date you received your PPP funds from your lender or the date you received your first PPP loan disbursement
9. The EIDL advance amount if you received one
10. The EIDL application number if you applied
11. Your business's payroll schedule
12. Your covered period (either the 8-week or 24-week period after your loan was disbursed)
13. Any alternative payroll covered period, if applicable

Source: KABBAGE⁸²

- Defendant edited and sent DocuSign versions of loan forgiveness applications to Plaintiffs and Class Members, with "\$0.00" reported as "Requested Loan Forgiveness Amount," in an effort to induce Plaintiffs and Class Members into attesting to false information

⁸² KABBAGE, *How to Calculate PPP Loan Forgiveness and Apply*, available at <https://www.kservicing.com/resources/how-to-calculate-ppp-loan-forgiveness-and-apply/>, last accessed March 23, 2022.

about the amount of loan forgiveness they were seeking and entitled to.

273. Defendant's representations and omissions were material because Defendant knew or had reason to believe that borrowers would rely on its instructions and timelines related to loan forgiveness applications, despite knowing or having reason to believe that these instructions and timelines were grossly inaccurate and would not be followed by Defendant.

274. Likewise, Defendant's representations and omissions were material because Defendant knew or had reason to believe that it did not have the proper staffing and technological capacity to process a high volume of loan forgiveness applications in the time mandated by SBA regulations, yet Defendant knew borrowers would rely on Defendant's representations of itself as a competent loan disburser and servicer.

275. Defendant intended to mislead Plaintiffs and the Georgia Sub-Class Members and induce them to rely on their misrepresentations and omissions.

276. In the course of their business, Defendant engaged in activities with a tendency or capacity to deceive.

277. Defendant acted intentionally, knowingly and maliciously to violate Georgia's Uniform Deceptive Trade Practices Act, and recklessly disregarded Plaintiff Worthy's and the Georgia Sub-Class Members' rights.

278. As a direct and proximate result of Defendants’ deceptive trade practices, Plaintiff Worthy and the Georgia Sub-Class Members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including, but not limited to, wasting hundreds and hundreds and hours of time, and in some cases precious financial resources, with K Servicing’s “customer service,” reapplying multiple times after K Servicing switched application portals, being asked to provide documentation above and beyond what the SBA’s regulations actually require, being asked to provide documentation that they previously submitted (multiple times), receiving documents that contain inaccurate information about their financing and accounts, and being asked to make payments on loans that should have been forgiven long ago.

279. Plaintiff Worthy and the Georgia Sub-Class Members seek all relief allowed by law including injunctive relief and reasonable attorneys’ fees and costs under Ga. Code § 10-1-373.

FIFTH CAUSE OF ACTION

North Carolina Unfair and Deceptive Trade Practices Act

N.C.G.S §§ 75, *et seq.*

(On behalf of Plaintiff Jason Carr & the North Carolina Sub-Class)

280. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully set forth herein.

281. Defendant's acts and omissions as set forth herein were in or affecting commerce.

282. As set forth herein, Defendant has violated the provisions of N.G.C.S. § 75-54, by attempting to collect a debt by fraudulent, deceptive or misleading representation.

283. Defendant misled Carr for months on end, repeatedly requiring him to submit unnecessary paperwork.

284. After denying Carr's application, K Servicing then fraudulently sent Carr a forgiveness application with the forgiveness amount pre-populated as "\$0.00," meaning that if Carr signed that document he would not be requesting forgiveness of any amount of his PPP loan.

Thereafter, Defendant continued its deceptive practices, contacting Carr to collect on his PPP loan by emailing him to tell him his loan was in default and that multiple payments were overdue

285. N.C.G.S. § 75-16 provides: "If any person shall be injured or the business of any person, firm or corporation shall be broken up, destroyed or injured by reason of any act or thing done by any other person, firm or corporation in violation of the provisions of this Chapter, such person, firm or corporation so injured shall have a right of action on account of such injury done, and if damages

are assessed in such case judgment shall be rendered in favor of the plaintiff and against the defendant for treble the amount fixed by the verdict.”

286. Defendant has committed unfair and deceptive trade practices as defined by N.G.C.S. § 75-16.

287. Plaintiff Carr and North Carolina Sub-Class members are entitled to an award of treble damages against Defendant pursuant to N.G.C.S. § 75-16.

SIXTH CAUSE OF ACTION

Michigan Consumer Protection Act (“MPCA”)

Mich. Comp. Laws Ann. §§ 445.901, *et seq.*

(On behalf of Plaintiff Edward Ford Services LLC & the Michigan Sub-Class)

288. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully set forth herein.

289. Plaintiff Edward Ford Services LLC and Defendant are “person[s]” within the meaning of § 445.902(d) of the MCPA.

290. Defendant is engaged in “trade or commerce” within the meaning of § 445.902(g) of the MCPA via its marketing of its small business lending services.

291. Defendant’s conduct, as described above, constitutes unlawful conduct of trade or commerce within the meaning of § 445.903 of the MCPA, including, but not limited to, specifically § 445.903(e) representing its services are of a particular standard, quality, or grade if they are another; § 445.903(g) advertising or representing its service with intent not to dispose of those services as advertised or

represented; § 445.903(n) causing a probability of confusion or of misunderstanding as to the legal rights, obligations or remedies of a party to a transaction; § 445.903(o) causing a probability of misunderstanding as to the terms or conditions of credit if credit is extended in a transaction; § 445.903(q) representing or implying its services will be provided promptly or at a specified time, or within a reasonable time, knowing or having reason to know it will not so be provided; § 445.903(v) taking or arranging for the consumer to sign a writing affirming acceptance, delivery, compliance with a requirement of law, or other performance, knowing or having reason to know that the statement is not true.

292. Under Section 445.911 of the MCPA, Plaintiff Edward Ford Services LLC and the Michigan Sub-Class have standing to pursue this claim because they suffered an ascertainable loss resulting from Defendant's conduct. Accordingly, Plaintiff Edward Ford Services LLC seeks damages, restitution, declaratory and injunctive relief, attorneys' fees and costs of suit on behalf of itself and the Michigan Subclass.

SEVENTH CAUSE OF ACTION

Florida Deceptive and Unfair Trade Practices Act

Fla. Stat. §§ 501.201, *et seq.*

(On behalf of Plaintiffs Vicki LeMaster & 365 Sun LLC & the Florida Sub-Class)

293. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully set forth herein.

294. Plaintiffs Vicki LeMaster and 365 Sun LLC and the Florida Sub-Class members are “consumer[s]” as defined by Fla. Stat. § 501.203.

295. Kabbage/K Servicing advertised and offered services in Florida and engaged in commerce directly or indirectly affecting the people of Florida.

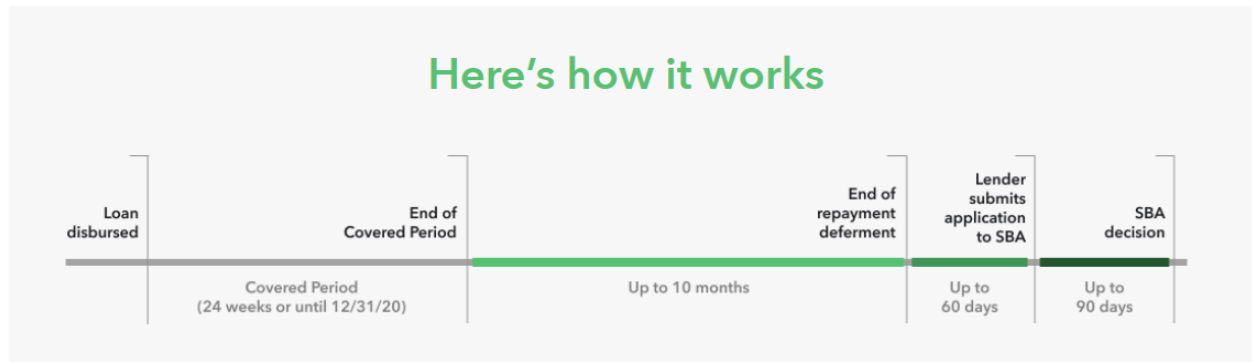
296. K Servicing engaged in unconscionable, unfair, and deceptive acts and practices in the conduct of trade and commerce, in violation of Fla. Stat. § 501.204(1), including:

297. Defendant’s deceptive trade practices include:

- Representing on its website under a section titled “Paycheck Protection Program (PPP) Loan Forgiveness” that customers will “enjoy the same great service and security you’ve come to expect with your line of credit – just through our new website.”⁸³;
- Representing on its website, under a FAQ “When will I receive my forgiveness decision?”, that “K Servicing has 60 days from receipt of a complete loan forgiveness application to issue a recommendation to the SBA, and the SBA is required to issue a decision within 90 days after the lender issues its recommendation to the SBA,” indicating to customers that their loan forgiveness decisions would be finalized within 150 days.⁸⁴;
- Representing the loan forgiveness timeline with misleading visuals, including but not limited to:

⁸³ Kabbage, *Paycheck Protection Program (PPP) Loan Forgiveness*, available at <https://www.kservicing.com/ppp-loan-forgiveness/> (last accessed March 23, 2022).

⁸⁴ Kabbage, *Paycheck Protection Program (PPP) Loan Forgiveness*, available at <https://www.kservicing.com/ppp-loan-forgiveness/> (last accessed March 23, 2022).



Source: KABBAGE⁸⁵

- Representing on its website that “borrowers with loans under \$150,000 who qualify to use the new Form 3508S may not need to submit any supporting documentation,” but continuing to demand thousands of customers with loans under this threshold continue submitting unnecessary documentation.⁸⁶;
- Representing on its website that only the following information was needed for loan forgiveness application, yet repeatedly requesting unnecessary documentation not included on that list, nor included in SBA regulations, from borrowers when they actually began the loan forgiveness application process:

⁸⁵ KABBAGE, *Paycheck Protection Program (PPP) Loan Forgiveness*, available at <https://www.kservicing.com/ppp-loan-forgiveness/> (last accessed March 23, 2022).

⁸⁶ KABBAGE, *Paycheck Protection Program (PPP) Loan Forgiveness*, available at <https://www.kservicing.com/ppp-loan-forgiveness/> (last accessed March 23, 2022).

What do you need for your PPP Loan Forgiveness Application

The PPP Loan Forgiveness Application is extensive and detailed, so make sure you have the following on hand:

1. Your business's legal name, DBA, trade name and business TIN (EIN, SSN)
2. Your business's address, phone, primary contact, or email address that matches the info on your loan application
3. The SBA PPP loan number assigned by your lender
4. The lender's PPP loan number
5. Your PPP loan amount
6. The number of employees at the time of your loan application
7. The number of employees at the time of your forgiveness application
8. The date you received your PPP funds from your lender or the date you received your first PPP loan disbursement
9. The EIDL advance amount if you received one
10. The EIDL application number if you applied
11. Your business's payroll schedule
12. Your covered period (either the 8-week or 24-week period after your loan was disbursed)
13. Any alternative payroll covered period, if applicable

Source: KABBAGE⁸⁷

- Defendant edited and sent DocuSign versions of loan forgiveness applications to Plaintiffs and Class Members, with "\$0.00" reported as "Requested Loan Forgiveness Amount," in an effort to induce Plaintiffs and Class Members into attesting to false information

⁸⁷ KABBAGE, *How to Calculate PPP Loan Forgiveness and Apply*, available at <https://www.kservicing.com/resources/how-to-calculate-ppp-loan-forgiveness-and-apply/> (last accessed March 23, 2022).

about the amount of loan forgiveness they were seeking and entitled to.

298. K Servicing's representations and omissions were material because they were likely to deceive reasonable consumers about the adequacy and competency of K Servicing's PPP Loan processing capabilities.

299. Plaintiffs LeMaster and 365 Sun LLC and the Florida Sub-Class members acted reasonably in relying on K Servicing's misrepresentations and omissions, the truth of which they could not have discovered.

300. As a direct and proximate result of the K Servicing' unconscionable, unfair and deceptive acts and practices, Plaintiffs LeMaster and 365 Sun LLC and the Florida Sub-Class Members have suffered and will continue to suffer injuries.

301. Plaintiffs LeMaster and 365 Sun LLC and the Florida Sub-Class members seek all monetary and non-monetary relief allowed by law, including actual or nominal damages under Fla. Stat. § 501.211, declaratory and injunctive relief, reasonable attorneys' fees and costs under Fla. Stat. § 501.2105(1) and any other relief that is just and proper.

EIGHTH CAUSE OF ACTION

Violation of O.C.G.A. § 13-6-11 (On behalf of Plaintiffs & the Nationwide Class)

302. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully set forth herein.

303. Defendant through its actions alleged and described herein acted in bad faith, was stubbornly litigious, or caused Plaintiffs unnecessary trouble and expense with respect to the transaction or events underlying this litigation.

304. As further described above, Plaintiffs and the Class have been injured and suffered losses directly attributable to Defendant's actions.

305. Plaintiffs therefore request that their claim for recovery of expenses of litigation and attorneys' fees be submitted to the jury, and that the Court enter a Judgment awarding their expenses of litigation and attorneys' fees pursuant to O.C.G.A. § 13-6-11.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Jason Carr, Vicki LeMaster, Edward Ford Services LLC, Carlton Morgan, 365 Sun LLC and Candice Worthy and the Class Members respectfully request that this Court enter an order:

- a) Certifying the proposed Classes;
- b) Appointing Plaintiffs as Class Representatives for the respective classes;
- c) Appointing Plaintiffs' attorneys below as Class Counsel for the classes and Sub-Classes;
- d) For an order finding in favor of Plaintiff and the Classes on all counts asserted herein;

- e) For damages in an amount to be determined by the trier of fact;
- f) For an order of restitution and all other forms of equitable, declaratory and injunctive relief as described herein;
- g) Awarding Plaintiffs reasonable attorneys' fees, costs and expenses pursuant to O.C.G.A. § 13-6-11 and as otherwise allowed by law;
- h) Awarding Plaintiffs pre- and post-judgment interest on any amounts awarded; and
- i) Granting such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs respectfully demand a trial by jury for all claims that may be so tried.

Dated: March 30, 2022

By: /s/ MaryBeth V. Gibson
MaryBeth V. Gibson, Esq.
Georgia Bar No. 725843
The Finley Firm, P.C.
Piedmont Center
3535 Piedmont Rd.
Building 14, Suite 230
Atlanta, GA 30305
(404) 978-6971
MGibson@thefinleyfirm.com

Shane R. Heskin, Esq. (*pro hac vice*
admission forthcoming)

Justin E. Proper, *Esq.* (Georgia Bar #
141782)

WHITE & WILLIAMS, LLP

1650 Market Street, Suite 1800

Philadelphia, PA 19103

(215) 864-6329

heskins@whiteandwilliams.com

*Attorneys for Plaintiffs & the Putative
Classes*

LOCAL RULE 7.1 CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing pleading filed with the Clerk of Court has been prepared in 14-point Times New Roman font in accordance with Local Rule 5.1(C).

Dated: March 30, 2022.

/s/ MaryBeth V. Gibson

MARYBETH V. GIBSON

Equality

Capital

Small Businesses Still Face \$28 Billion of Unforgiven PPP Loans

That lingering debt is creating a burden for the smallest businesses, including many run by minority entrepreneurs.



Photographer: Ashish Kumar/EyeEm/Getty Images

By Amy Yee and Andre Tartar

February 17, 2022, 10:00 AM EST

Almost 350,000 loans made to small businesses in 2020 during the Covid-19 pandemic haven't been forgiven, according to a Bloomberg News analysis of Paycheck Protection Program data, and most of

them are for less than \$25,000.

That lingering debt – about \$28 billion, the analysis shows – is creating a burden for the smallest businesses, including many run by minority entrepreneurs, say advocacy groups, community leaders and business owners. Many are struggling with the process of seeking forgiveness under terms of the loan program that distributed more than \$800 billion over two years.

Forgiveness Gap

Smaller borrowers made up the biggest share of the nearly 350,000 fully unforgiven 2020 Paycheck Protection Program loans



Source: Bloomberg analysis of Small Business Administration data last updated on Jan. 3, 2022

Unlike traditional loans, those given as part of the pandemic relief program can be forgiven if [certain conditions](#) are met. Proceeds had to be spent on payroll and other eligible expenses within a designated time frame, for example. But some borrowers who say they meet the criteria are struggling with technical snafus, onerous documentation requirements and confusing websites.

Angela Thompson, owner and chief executive officer of a property renovation company based in Jacksonville, Florida, first applied for forgiveness for her \$172,000 PPP loan in December 2020. Over a year and more than 100 calls to loan providers later, she's gotten several notices saying she's on the hook to start repaying the debt.

Initially, she applied for forgiveness via Kabbage, the online lender that had given her the loan. But when American Express Co. bought Kabbage in August 2020, it didn't acquire its pre-existing loan portfolio. Instead, her loan lived with another provider, K Servicing. Thompson did not get a link to their PPP forgiveness website until August 2021. She immediately submitted her application. But in December, she got a bill for \$22,000 for her monthly loan re-payment; and then another in January and another in February.



Angela Thompson Source: Thompson

K Servicing customer service told her to ignore the notices, but the Small Business Administration, the federal agency that administers the program, still listed her loan as unforgiven in its most recent data update on Jan. 3. “I have great credit. How are you telling me to ignore a bill?” Thompson said in an interview. “This has me stressed out.”

K Servicing told Bloomberg News that the majority of its PPP loans have been forgiven and that it’s continuing to work with customers who have outstanding loans.

Advocates led by the Center for Responsible Lending, on Thursday asked the SBA, the U.S. Treasury and Congress to take steps to help small business owners with outstanding PPP loans, including by automatically forgiving those of \$25,000 and less.

National Urban League, National Association for Latino Community Asset Builders, UnidosUS, National Coalition for Asian Pacific American Community Development and Hope Policy Institute are among the more than 50 advocacy groups, minority-business associations and minority-focused lenders that signed the letter.

They say the smallest business owners, some of them sole proprietors, including drivers, cleaners and landscapers, have more challenges documenting payroll, expenses and income. This is especially true if businesses are cash based, lack professional accountants or face technology and language barriers.

“We must come through for the most vulnerable,” said Aracely Panameño, former director of Latino affairs at the Center for Responsible Lending.

More from

Bloomberg Equality

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California Group Votes to Limit Reparations to Slave Descendants

Advocates are also asking the SBA to rescind a rule denying forgiveness to borrowers who made good-faith errors and eliminate ‘gotcha’ denials of loan forgiveness due to sudden rule changes.

“Borrowers are desperate. Small businesses thought they were doing everything right. Now they are being told their loans are not forgiven,” said Tracy Ward, a director at Self-Help Ventures Fund, a nonprofit lender based in North Carolina.

One small-business owner said Bank of America Corp. denied forgiveness for a \$15,000 loan because she lacked a specific payroll document. She spent nine months pleading her case to the bank and local elected officials to no avail. Her first repayment bill for \$2,000 came in October.

“PPP applicants were responsible for determining their own eligibility under the complex program rules,” the letter from advocacy groups reads. “While eligibility for SBA loan programs is typically determined by the lender and SBA, for PPP this burden was shifted to the small business borrower.”

The SBA declined to comment on future policy decisions. The agency last month announced that borrowers could request an SBA review of partially forgiven PPP loans.

While the vast majority of the 5.14 million PPP loans approved in 2020 have been forgiven – and many borrowers had a smooth process – as of early January, there were 349,372 unforgiven loans and another 380,000 that were partially forgiven.

Still on the Hook

Among the 380,000 partially forgiven 2020 PPP loans, smaller loans tended to have a lower relative amount written off

Source: Bloomberg analysis of Small Business Administration data last updated on Jan. 3, 2022

The SBA has approved more than 11.4 million PPP loans since 2020; the forgiveness process is still underway for some of those issued last year.

Borrowers on the hook to pay back all or part of their loans could be pushed into more debt, have their credit damaged or possibly be forced into bankruptcy. And it's the smallest businesses with the fewest resources that are most at risk, said Dafina Williams, senior vice president at Opportunity Finance Network, a national association of community development finance institutions.

"They can't afford to take on another penny of debt. It could be devastating," she said.

Applying for forgiveness can be so complicated that some small businesses simply give up.

"There's a gap in ability to complete the process," said Ruben Alonso, CEO of AltCap, a community lender in Kansas City, Missouri. "It takes a lot of time for entrepreneurs who are working to keep businesses open."

Many of the issues plaguing business owners seeking forgiveness also made it hard for them to get loans in the earliest phase of the program. In the first tranche of PPP loans, lenders distributed an outsize number to White neighborhoods. Minority-owned businesses tend to be smaller and small businesses more often lack existing relationships to mainstream banks and accountants to help with paperwork. And most don't have formal employees.

Even for those who get approval, getting forgiveness can be difficult, said Dennis Huang, executive director of the Asian Business Association. The Los Angeles-based nonprofit got a PPP loan for about \$38,000 in February 2021.

Huang, who has an MBA, said it was difficult to find basic information about forgiveness from his lenders Northeast Bank and ACAP Fund, now called Newity. Application forms were buried deep within websites, deadlines were unclear and customer service was shoddy. “ACAP had a phone tree that goes in circles. I could not get a live person to help us,” said Huang. Finally in November 2021, the SBA listed the loan as forgiven.

The process was “horrible,” said Huang. “I don’t know how small businesses do it.”



BUSINESS

PPP loans were made to be forgiven. In heavily Black areas like South Florida, many aren't

BY BEN WIEDER

UPDATED MARCH 27, 2022 6:03 PM



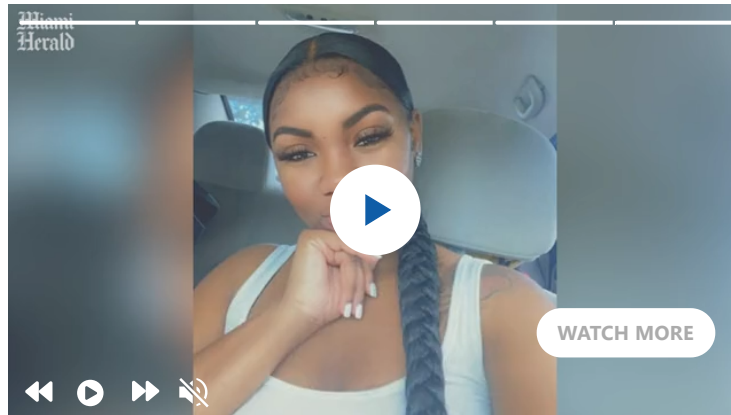
Performance of Kenya Safari Acrobats. The touring group's owner, Karen Makange, struggled to get her Paycheck Protection Program loan forgiven.
KAREN MAKANGE

For Louine Raymonvil, the \$105,000 Paycheck Protection Program loan his North Miami Beach security business received in June 2020 was a godsend.

"The help was there for me to help with employees, so thank God I got it," he said.

But getting the loan forgiven has been another story.

TOP VIDEOS



Alleged hitman counting money paid to him for the murder of Miami TSA officer

The lending program, commonly referred to as PPP, was created by Congress as part of the March 2020 CARES Act and designed to provide relief to small businesses struggling with COVID-19-related closures and disruptions. Under the terms of the program, which was administered by the Small Business Administration, the loans didn't have to be paid back so long as they were used for payroll and other approved expenses.

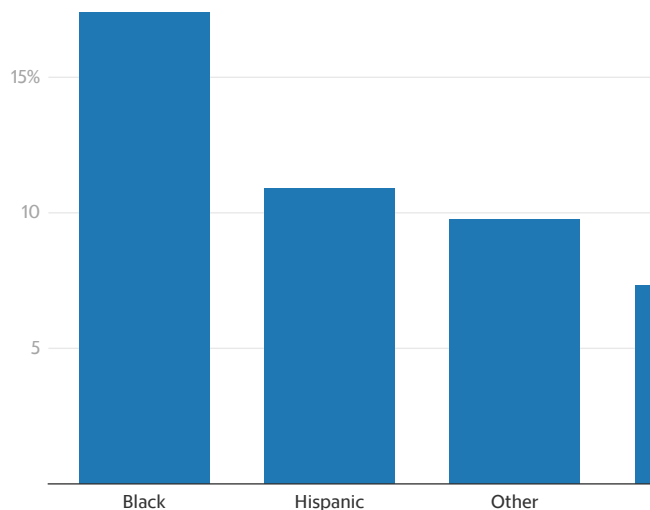
The vast majority of small businesses that took out PPP loans have had their balances forgiven, but a small but significant number of small businesses are still struggling to win approval for their requests for forgiveness, nearly two years after the [program was first created](#).

And a Miami Herald analysis of the most recent SBA data finds that forgiveness rates have been significantly lower for small businesses, like Raymonvil's, that are based in majority Black and majority Hispanic ZIP codes.

The percentage of loans that remain unforgiven in majority Black ZIP codes is more than three times higher than the percentage of unforgiven loans in majority white ZIP codes, while the percentage of unforgiven loans in majority Hispanic ZIP codes is more than double that of majority white ZIP codes.

Unforgiven PPP loans

While 93% of Paycheck Protection Program loans approved in 2020 have been forgiven so far, the percentage of unforgiven loans is much higher in majority-Black and majority-Hispanic zip codes.



The analysis of the data, which is current as of early January, included loans approved in 2020, all of which are past the grace period during which PPP loans are not required to be repaid.

The Herald analyzed forgiveness rates by ZIP codes rather than by the race or ethnicity of individual business owners because roughly 70% of loans in the data contained no information about the race or ethnicity of the business owner.

The analysis further showed that forgiveness rates in South Florida trailed the national average. Miami-Dade and Broward counties, which have significant Black and Hispanic populations, had two of the lowest forgiveness rates of any counties in the country, with 82% of 2020 PPP loans forgiven in Miami-Dade County as of early January and 83% of 2020 PPP loans forgiven in Broward County at the time.

Raymonvil, originally from Haiti, went through PayPal for his 2020 loan, which partnered with WebBank. Raymonvil's request for forgiveness was initially denied and when he called the SBA he was told the issue had something to do with his state registration as a security guard, which is up-to-date.

Raymonvil maintains that the bank is at fault.

"I filled out the report," he said of his first application for forgiveness. "You have to do your part."

He points out that a second PPP loan his business received in 2021 from the online lender ReadyCap Lending has already been forgiven as evidence that the issue is not on his end.

Meanwhile the bank keeps sending Raymonvil emails calling on him to repay the loan, but he says the money is long gone.

"I cannot give you something I don't have," he said.

WebBank and PayPal didn't provide comment in response to questions from the Herald. The SBA said it could not comment on the Herald's findings.

‘WHAT DID WE DO?’

For many minority-owned businesses, the first problem was getting a PPP loan.

The SBA tasked banks and other lenders with vetting prospective borrowers, sending them the cash and then processing forgiveness applications.

Researchers at the [National Community Reinvestment Coalition](#), which advocates for better financial and housing access for minorities and underserved groups, sent white and Black borrowers with similar financial profiles to banks to inquire about short-term loans for their small businesses, including PPP loans, in April and May of 2020. [White prospective borrowers](#) were more often encouraged to apply for a loan and consider the bank’s other financial offerings. Women were offered less information about the PPP program than men.

“It was blatant discrimination,” said Anneliese Lederer, director of fair lending and consumer protection at the NCRC.

The money for loans in the PPP program came from the federal government, though banks were required to provide the cash up-front and were reimbursed after a loan was forgiven, repaid or considered to be in default. For their efforts, the banks [were given fees on a sliding scale](#) based on the size of the loan approved.

The Treasury Department initially advised banks to target their existing customers and the House Select Subcommittee on the Coronavirus Crisis [found that](#) this had the effect of making PPP loans less accessible to minority and women-owned businesses and smaller businesses, who already struggled to get access to credit before the pandemic.

It also pushed some minority-owned businesses to turn to lesser-known online lenders.

READ NEXT

BANKING

Unforgiven: Two years later, small businesses still waiting for promised PPP loan forgiveness

MARCH 02, 2022 9:31 AM

“I have a business relationship with Chase, but Chase declined me,” said Gigi Mchale, a nurse anesthetist in North Miami Beach who ultimately got a PPP loan as an independent contractor through the online lender Bluevine.

Other Black business owners she knows had similar experiences.

“They were all kind of like ‘What did we do?’ ” she said.

Like Mchale and Raymonvil, the majority of borrowers still seeking forgiveness in majority-Black and majority-Hispanic areas got their PPP loans through online lenders.

Karen Makange was approved for a PPP loan just under \$12,000 from the online lender Kabbage before she’d even finished submitting the paperwork to Truist, where she holds a business account.

But getting the loan forgiven has been hard.

As the Herald [previously reported](#), Kabbage, now operating under the name KServicing, has the lowest forgiveness rate of any major PPP lender.

Makange, based outside Greensboro, North Carolina, operates [a performance company](#) that brings in African acrobats to perform across the country.

In the past, she said her company was on the road 300 days a year, but has performed just three times since the beginning of the pandemic.

She first applied for forgiveness in December 2020, but had to resubmit her application in 2021 after the company introduced a new application platform. Then the company asked her to submit the same paperwork over and over.

“My whole life was spent dealing with this,” she said. “I couldn’t do anything with my business.”



Karen Makange (hat) performs with Kenya Safari Acrobats. She struggled to get her Paycheck Protection Program loan for the group forgiven. *KAREN MAKANGE*

She turned to the nonprofit [Better Business Bureau](#) and the SBA, but got nowhere.

In the meantime, she was already approved for forgiveness for a second PPP loan she obtained in March 2021.

She finally got good news early this month that her loan was forgiven, more than a year after she first sought forgiveness.

“That was such a relief,” she said. “I’m like, ‘I can breathe.’ ”

In response to questions about its low forgiveness rate, KServicing CEO Laquisha Milner said in a statement to the Herald that “a majority of our PPP loans have already received SBA forgiveness” and that “we will continue to work with our borrowers to help ensure they take the steps required to obtain forgiveness by the SBA.”

BEARING THE BRUNT

The SBA and some lenders changed how they approached the second year of the PPP program in 2021 to help minority and women-owned businesses and smaller businesses who struggled the first year.

The SBA [limited applications in the first few weeks](#) of 2021 to businesses with fewer than 20 employees and expanded eligibility for sole proprietors.

Customers Bank, one of the [biggest lenders in the program by volume](#), partnered in 2021 with 26 organizations across the country, including local Black and Hispanic

Chambers of Commerce, to offer so-called “white label” loans that were branded with the name of the partner organization. The bank also shared a portion of the fees it earned on the loans with these groups.

Miguel Alban, the director of multicultural banking at Customers Bank, oversaw the program, which approved more than \$26 million in PPP loans, as an opportunity to both do the right thing and expand the bank’s customer base.

“These communities are very loyal. You give them a hand right now, they will remember us,” he said.

But those efforts, unfortunately, came too late for many Black-owned businesses. An [August 2020 report](#) by the Federal Reserve Bank of New York found that the number of Black-owned businesses dropped by 41% during the first several months of the pandemic, more than double the 17% of white-owned businesses that shuttered. Hispanic-owned businesses saw the second biggest decline at 32%.

Jason Richardson, director of research at the financial access advocacy group NCRC, said that women and minority-owned businesses always struggle the most during disasters like the COVID-19 pandemic.

“Any time you have an event like this, it is the smallest and weakest businesses that are going to bear the brunt of the damages,” he said.

This story was originally published March 23, 2022 8:49 AM.



BEN WIEDER

202-383-6125

Ben Wieder is a data and investigative reporter in McClatchy’s Washington bureau. He worked previously at the Center for Public Integrity and Stateline. His work has been honored by the Society of American Business Editors and Writers, National Press Foundation, Online News Association and Association of Health Care Journalists.



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BY MICHAEL BUTLER

UPDATED MARCH 30, 2022 9:17 AM



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UPDATED MARCH 29, 2022 5:49 PM

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MARCH 28, 2022 2:12 PM



BANKING

Unforgiven: Two years later, small businesses still waiting for promised PPP loan forgiveness

BY BEN WIEDER

UPDATED MARCH 08, 2022 10:20 AM



Hairdresser Vicki LeMaster, who has not been able to get her PPP loans forgiven through the online lender Kabbage, is among many small business owners who await PPP forgiveness due to the COVID-19 pandemic two years later. BY **DANIEL A. VARELA** ✓

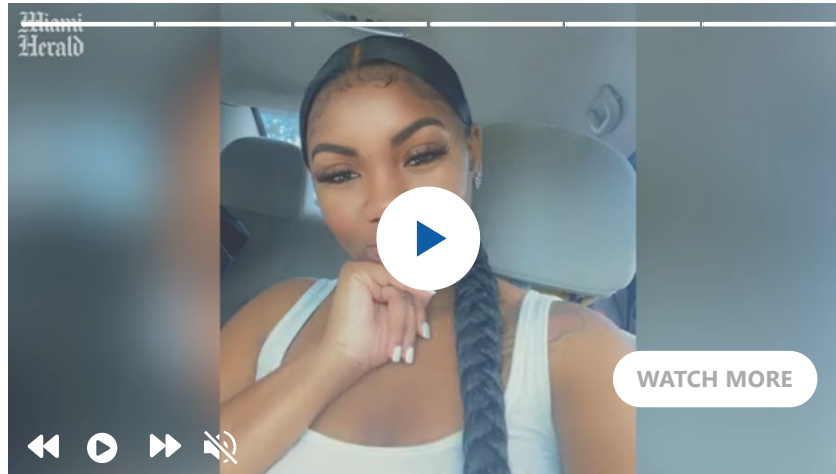
After COVID-19 shutdowns put Miami hairdresser Vicki LeMaster out of work, a friend recommended that she apply for a Paycheck Protection Program loan through

the online lender Kabbage.

“I didn’t want a lot of money, just enough to get me through,” she said.

The process seemed simple enough and LeMaster was soon approved for a modest amount in May 2020, which under the terms of the program wouldn’t have to be paid back if used for approved purposes, like payroll.

TOP VIDEOS



Alleged hitman counting money paid to him for the murder of Miami TSA officer

But getting forgiveness has been far less simple.

The program, approved by Congress as part of the [CARES Act relief package](#), was designed to help small businesses and independent contractors stay afloat as they dealt with pandemic-related closures and disruptions, providing forgivable loans up to \$10 million.

The U.S. Small Business Administration, which administered the program commonly known as PPP, provided the money but tasked banks and other lenders with vetting and approving applications and handling the forgiveness process.

Critiques of the program have largely focused on [high levels of fraud](#) — with President Joe Biden announcing at his State of the Union Address Tuesday night that he would appoint a chief prosecutor for pandemic fraud at the U.S. Department of Justice — and the [challenges minority-owned businesses faced](#) accessing the funds.

But for some borrowers, the process of seeking to have their loans forgiven has also been flawed. The problem has been most pronounced for those whose loans were approved by Kabbage, which has the worst rate of forgiveness of any major lender in the program, according to a Miami Herald analysis of loans approved in the first year of the program.

While it took just hours for LeMaster, who is an independent contractor, to get approved by Kabbage for her loan, the lender is now asking for the money back and her application for forgiveness has still not been approved seven months later. She said she's spent hundreds of hours on the phone and replied to numerous emails asking her to resubmit documents and paperwork that she had already provided. Calls to the SBA for help got her nowhere.

"It's been ridiculous," she said. "This thing has been drawing on for months on end."

All of that despite the fact that her PPP loan was minuscule: just over \$3,000.



Hairdresser Vicki LeMaster, who has not been able to get her PPP loans forgiven through the online lender Kabbage, is among many small business owners who await PPP forgiveness two years later. She's shown at a salon in Miami, Florida, on Tuesday, March 1, 2022. Daniel A. Varela DVARELA@MIAMIHERALD.COM

"These guys act like I asked for a loan to buy the Taj Mahal," she said.

According to the Herald analysis, while 93% of PPP loans approved in 2020 have been forgiven so far, only 54% of PPP loans approved by Kabbage in 2020 had been forgiven as of early January 2022, according to SBA data.

The Herald analyzed forgiveness for PPP loans approved in 2020 because all of those loans are [past the grace period](#) where repayment is not required, though borrowers are not required to repay their loans while their forgiveness applications are being evaluated.

Kabbage, a so-called financial technology or fintech company, partnered with two banks, Cross River Bank and Customers Bank, to process some of the PPP loans.

Cross River and Customers had the second- and third-lowest forgiveness rates among major lenders: 74% for the former and 77% for the latter.

All three were prolific PPP lenders, accounting for more than 8% of all loans approved in 2020. They have accounted for a disproportionate share of the 2020 PPP loans that remain unforgiven: Combined, Kabbage, Cross River and Customers account for 40% of all 2020 loans that were still unforgiven as of early January.

Bigger banks prioritized existing business customers when the PPP program was unveiled, leaving smaller businesses and independent contractors like LeMaster to lenders like Kabbage.

“Because we don’t have a banker on our side, we’re the ones who have to deal with all the garbage,” she said.

‘THERE’S NO ONE RUNNING THE SHIP’

For borrowers like LeMaster, the PPP loans were undoubtedly a boon during a difficult time. But the program also might have saved Kabbage, which was struggling at the start of the pandemic, with layoffs looming.

Banks were paid a fee for each application they pushed through on a sliding scale based on the size of the loan. Loans approved by Kabbage in 2020 appear to have generated more than \$145 million in fees, according to the Herald’s analysis of PPP data. Loans approved by partner banks Cross River and Customers generated an additional \$405 million.

Kabbage and other fintech companies typically processed the applications using their online systems and then put the loans on the books of their partner banks, splitting the fees.

Thanks in part to its PPP revenue, Kabbage became an attractive takeover target. American Express announced in August 2020 that it would acquire the lender for a rumored \$850 million.

There were early signs that Kabbage’s PPP success wasn’t an entirely feel-good story.

The Miami Herald flagged Kabbage for having approved a disproportionate share of seemingly fraudulent PPP loans in a September 2020 investigation. In May 2021, the House Oversight Committee’s Select Subcommittee on the Coronavirus Crisis launched an investigation into Kabbage, Cross River and two other lenders, noting “reports that FinTech companies and bank partners have been linked to a disproportionate number of fraudulent PPP loans.”

When American Express finalized its acquisition of “substantially all” of Kabbage in October 2020 it took on the company’s technology, financial products and many of its employees, but not Kabbage’s existing small business loan portfolio, which included PPP. Those were left behind and the company that remained to handle them was rebranded KServicing.

Borrowers say that’s when the problems started.

Customers from around the country described submitting paperwork multiple times, only to be told later that they needed to submit different documents. They told the Herald they were asked to begin repaying the loans as they awaited decisions on forgiveness with the dubious promise that they would later be reimbursed. And they said they were told to sign paperwork that included false information, such as incorrect loan amounts or Social Security numbers.

For the time and energy she spent seeking forgiveness, San Diego psychologist Kathy Vandenburg said she could have earned the \$20,833 she was awarded by Kabbage — “no problem.”

Vandenburg’s loan was finally forgiven early last month, nearly a year and a half after she first applied.

Crystal Rischer, a Sarasota model and actor, said she felt like the endless hours she spent on the phone made no difference.

“There’s no one running the ship,” she said.

She said she and her husband, Michael, a photographer, have been seeking forgiveness for more than a year for two Kabbage PPP loans.

And then there were the barnyard animals.

Multiple borrowers, including Rischer, described hearing chickens and other barnyard animals in the background in some of their calls with customer service representatives, which they said struck them as unprofessional.

Joseph, who owns a Los Angeles call center that helps student borrowers and asked that he be identified only by his first name, provided the Herald with a recording of a phone call he made with KServicing customer service representatives in which a rooster can clearly be heard crowing repeatedly in the background. A manager chuckles when he asks about the sound and says the sound is coming from the neighbors.

It was one of many calls Joseph made to KServicing over the course of more than a year as he tried to get his company’s \$14,000 PPP loan forgiven and get KServicing to return \$3,500 he had repaid while his forgiveness application was still being reviewed. The loan was finally forgiven in late January 2022 and the company returned the money he’d paid a month later.

The Herald sent KServicing a detailed list of questions. In response, KServicing CEO Laquisha Milner sent the Herald a statement noting that “a majority of our PPP loans have already received SBA forgiveness” and that “we will continue to work with our borrowers to help ensure they take the steps required to obtain forgiveness by the SBA.”

American Express spokesperson Paul Bernardini emphasized that KServicing is a separate company, adding American Express hopes “KServicing can resolve these matters quickly for the benefit of their customers.”

Cross River Bank did not respond to a request for comment.

[UPDATE: Customers Bank did not respond to a request for comment before online publication but contacted the Herald after publication to indicate that its most up-to-date figures showed that the bank’s overall forgiveness rate was 88%.



[CNBC DISRUPTOR 50](#) | [2021 LIST](#) | [2020 LIST](#) | [2019 LIST](#) | [2018 LIST](#) | [METHODOLOGY](#)

CNBC DISRUPTOR 50

AmEx's purchase of online lender Kabbage left desperate PPP borrowers in the cold

PUBLISHED WED, APR 7 2021•1:55 PM EDT UPDATED WED, APR 7 2021•4:29 PM EDT



Ari Levy
[@LEVYNEWS](#)

[WATCH LIVE](#)

KEY POINTS

When American Express bought “substantially all” of Kabbage last year, it left behind the business responsible for PPP loans.

Kabbage borrowers returned this year for a second draw of funds only to find a company in chaos.

“This is the worst company and we may lose our loan that we desperately need for our business,” said Dawn Lindsay, who has yet to get her second round of funding.

In this article

AXP **-0.96 (-0.50%)**





When the pandemic shut down Dawn Lindsay's family carpet cleaning business last year, the U.S. government's paycheck protection program provided a brief but essential lifeline. To get her \$7,500 PPP loan, Lindsay turned to online lender Kabbage, a service recommended by her accountant.

Lindsay, who runs the company with her husband, Todd, said the process was smooth and easy. But the second round of PPP funding, which the Small Business Administration opened up in January amid the ongoing economic crisis, has been a nightmare. That's because the Lindsays are now dealing with a very different Kabbage from the one they remember.

[American Express](#) acquired [Kabbage in August](#). Not included in the deal was Kabbage's loan book, which had become one of the biggest in the country for distributing PPP funds. The orphaned division, now known as [K Servicing](#), has left borrowers frustrated, confused and searching for answers as their businesses hang on by a thread.

"This is the worst company and we may lose our loan that we desperately need for our business," said Dawn Lindsay from her home in Lula, Georgia, about 70 miles northeast of Atlanta. The couple started [Esteamed Solutions](#) in 2018 with retirement money from Dawn's years of waiting tables at a sushi restaurant and Todd's career at Cargill. "We're down to our last bit of savings," she said.

The Lindsays' struggles are familiar to thousands of Kabbage customers, who were relieved last year when the fintech company came to their aid with an easy-to-use online application that could walk them through a complicated process. Many banks and credit unions were struggling

As part of its Disruptor 50 series last year, CNBC [included Kabbage](#) (ranked 24th on the [2020 list](#)) and highlighted the company's rapid move to partner with small banks and jump into PPP loans, helping get emergency assistance to restaurants, boutique hotels, beauty shops and corner retailers. At the time of publication in June, Kabbage had delivered funding to over 130,000 businesses, with an average loan size of about \$29,000. Rob Frohwein, Kabbage's co-founder and then CEO, called it "fintech's shining moment."



Rob Frohwein, CEO of Kabbage

Adam Jeffery | CNBC

By the end of the PPP's early extension in August, the number of applications the company had approved swelled to almost 300,000, totaling \$7 billion in small business funding, [according to Kabbage](#), making it the second-largest U.S. PPP lender by volume, behind only [Bank of America](#).

Later that month, American Express swooped in, [buying "substantially all" of Kabbage](#), including the Atlanta-based company's team as well as its small business lending technology and data platform.

But when PPP borrowers returned for their second loans in early 2021, it became apparent that American Express had left a mess behind.

In an email to CNBC, American Express reiterated its past statements about the transaction and suggested borrowers reach out to K Servicing.

“That portfolio and associated servicing obligations were retained by Kabbage, Inc., which now operates as K Servicing,” American Express said. “Customers of these loans need to contact K Servicing for support. We know this is a challenging time for small businesses and lenders that are managing PPP requests. We hope K Servicing can quickly resolve any servicing issues impacting its customers.”

Customers have been contacting K Servicing in droves. It’s not helping. The Better Business Bureau has been [flooded](#) with one-star reviews from borrowers complaining of K Servicing’s “negligence” and “incompetence” and offering strong recommendations that others, “DO NOT USE THEIR SERVICES!” A [Facebook](#) page called K Servicing PPP Loan Support Group has over 2,000 members.

While American Express has distanced itself from K Servicing, existing Kabbage customers are understandably confused about who’s accountable.

The [new website](#) reads “K Servicing for Kabbage” at the top. Further down it says, “In connection with American Express’s acquisition of Kabbage, we’ve established K Servicing to maintain consistency in the way you manage your existing loans.” And the bottom of the page includes a disclaimer that says “Kabbage Funding is a trademark of American Express,” referring to the lending operation that the credit card company actually did acquire.

K Servicing doesn’t include the names of any executives or employees on its website. There are three phone numbers for borrowers to use, depending on whether they’re a Kabbage customer, PPP borrower or repaying a loan.

The only email address available is support@kservicing.com. CNBC sent multiple messages to that address and didn’t get a response. A customer support representative who answered a call to the number for PPP loans was able to answer some questions on the condition that we not use her name.

The rep said she was working out of a call center in the Philippines. She said she joined K Servicing recently and never worked for Kabbage. She indicated that many loans are being delayed because customers don’t provide proper documentation. If they change banks, the loan could get flagged for review. She was unsurprised by the extent of the complaints and said that

When asked if she could provide any details on who runs the company and how many people are employed there, the rep checked with a supervisor and returned a few minutes later. She said she couldn't give a headcount number, but said the CEO is Laquisha Milner, who's based in Atlanta. Milner is also listed as CEO of K Servicing at the [Better Business Bureau](#). According to her [LinkedIn profile](#), Milner has worked at Kabbage for almost nine years, with the title of head of program management since July 2019.

Just after initial publication, Milner emailed the following statement:

K Servicing is and has been committed to providing excellent service to our borrowers. PPP is a critical lifeline to countless small businesses, rolled out quickly through a public/private partnership. K Servicing has met significant demand even under ever-changing program requirements. To that end, K Servicing continues to rapidly serve all eligible businesses while addressing qualification challenges for some by putting proper measures in place to proactively identify and respond to requests through the continuous improvement of the borrowers' experience. The results are already being realized and will continue.

'Jumped through every hoop'

The SBA opened the second draw process for PPPs in January, with authorization from Congress to issue up to \$284 billion in loans of up to \$2 million each. To be eligible, companies must have no more than 300 employees and have experienced at least a 25% reduction in gross receipts in a quarter between 2019 and 2020.

The original deadline for the program was March 31, but lawmakers [extended](#) it by two months. Through March 28, the [SBA had awarded](#) almost 3.6 million loans this year worth a total of nearly \$212 billion.

When Lindsay applied for her second loan in January, she at first saw no reason for concern. Her application for another \$7,500 was quickly approved, but Lindsay noticed on the online dashboard that her old bank account was linked to the loan. She called K Servicing and had them update her profile with her new bank.

After she sent a voided check to K Servicing, the lender sent two microdeposits to her new account on Feb. 1, confirming the account. Lindsay shared a bank statement with CNBC,

Still, when Lindsay signed the loan documents, the money was sent to her old bank account. Since then, she's called and emailed K Servicing dozens of times to clean up the situation. Despite sending utility bills, tax returns and bank statements, as requested by various call center representatives, the money hasn't been moved to her current account.

Dawn and Todd Lindsay

Dawn Lindsay

According to the SBA, the forgivable loan was issued on Feb. 18, and the Lindsays are required to repay it if they can't show that the money has been used for qualified expenses like payroll and supplies. Because the loan has been approved and has what's known as an E-Tran number from the SBA, Lindsay can't cancel it and reapply elsewhere.

"We have jumped through every hoop they have given us on a loan in our name," she said.

A common complaint from Lindsay and other borrowers is that the representatives they reach in the various call centers are unhelpful. They take down information, promise they'll elevate the matter, and the customer hears nothing until calling again and going through the same process with another rep. Weeks later, there's no progress.

Time is running out



Jessica Edwards, an accountant, received her first PPP loan of \$9,474 through Kabbage in May of last year, after losing some of her top clients during the pandemic. Later in the year, Edwards moved with her family from Montana to Utah after her husband's employer transferred him.

Edwards' second loan of the same amount was approved in January and disbursed on Feb. 4. However, like with Lindsay, the money was sent to an old account. Over two months later, she's still waiting and has been calling multiple times a week for updates. Twice in late March, Edwards spoke with representatives, who requested additional information, like her 2019 taxes and a utility bill.

PPP rules give borrowers 24 weeks to put the money to work on qualified expenses. That period is more than one-third expired and Edwards doesn't have the loan. She said she first used Kabbage because people in her network of accountants raved about it, and now they're all perplexed.

"This wasn't what we were seeing before the acquisition," Edwards said. "My experience before was great."

K Servicing is far from the only PPP lender that's struggling to meet borrower needs. In addition to the size of the program and the sheer number of borrowers, the SBA is constantly making changes that require participating financial institutions to tweak their software and systems, said Eyal Lifshitz, CEO of online small business lender BlueVine.

For example, in March the SBA said that self-employed individuals could [switch to using gross income](#) instead of net profit when applying for a loan, making them eligible for more money. Lifshitz said it took several days for BlueVine to build in that functionality, forcing the company to pull engineering resources from other projects. Staying up to date with all of the SBA's rules is costly and requires ongoing investment, he said.

"You can't do this without putting muscle into it," said Lifshitz. "Some are doing it. Some are tired."

K Servicing tried to relieve some pressure by partnering with fintech company [SmartBiz](#) in late March to help borrowers with their second draws. K Servicing's website now actively sends people to SmartBiz, which processes the applications and gets the loan from a small lender called Customers Bank.

"At this time, KServicing is not accepting new second draw loan applications for borrowers that took their first PPP loan through Kabbage," K Servicing says. "Please use the link below to apply for your second draw loan through our partner, SmartBiz."

SmartBiz said in an emailed statement that K Servicing asked for its support last month, when the new formula for calculating loan amounts was introduced.

"SmartBiz Loans was asked to process loan applications for KServicing's PPP customers because the new formula was being implemented in their PPP loan application while it wasn't in KServicing's and this would potentially be a better outcome for their customers," the company said.

The first time Joanne Cleaver heard of SmartBiz was March 23, when she received an email from K Servicing telling her that the company "recently partnered with SmartBiz to process PPP second draw applications" and directing her to a link where she could apply.

By that time, Cleaver had already given up on K Servicing and moved onto a local credit union that processed her loan right away.

Cleaver, who runs [Wilson-Taylor Associates](#), a consulting firm in North Carolina, said she had no problem with her first \$16,773 loan last year. She applied for her second round in February and was notified in early March that the application was complete. But on March 6, she was told that

On March 16, K Servicing informed Cleaver that her loan was rejected. She said the company didn't provide an explanation and told her there was no way to appeal.

A week later, after Cleaver had turned elsewhere for her money, the email landed from K Servicing telling her to reapply through SmartBiz.

"They are constantly changing what they say about how to pursue the PPP process," Cleaver said. "And yet cannot execute their way out of a wet paper bag."

Update: This story was updated to include comments from K Servicing and SmartBiz received by CNBC after initial publication.

WATCH: [Biden administration changes who qualifies for Paycheck Protection Program loans](#)

VIDEO 02:58

Biden administration changes who qualifies for Paycheck Protection Program loans

In this article

AXP -0.96 (-0.50%)



JS44 (Rev. 10/2020 NDGA)

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

Jason Carr, Vicki LeMaster, Edward Ford Services LLC,
Carlton Morgan, 365 Sun LLC and Candice Worthy,
individually and on behalf of all others similarly situated

DEFENDANT(S)

Kabbage, Inc. d/b/a K Servicing

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Orysth County, North Carc
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Fulton County, Georgia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

MaryBeth V. Gibson
The Finley Firm, P.C.
3535 Piedmont Road
Bldg 14, Suite 230
Atlanta, Georgia 30305
404-320-9979

ATTORNEYS (IF KNOWN)**II. BASIS OF JURISDICTION**

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. GOVERNMENT PLAINTIFF
☐ 2 U.S. GOVERNMENT DEFENDANT
☐ 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
☒ 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

III. CITIZENSHIP OF PRINCIPAL PARTIES(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
(FOR DIVERSITY CASES ONLY)

- | PLF | DEF | PLF | DEF | |
|---------------------------------------|----------------------------|----------------------------|---------------------------------------|--|
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 | CITIZEN OF THIS STATE INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE |
| <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | CITIZEN OF ANOTHER STATE INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | CITIZEN OR SUBJECT OF A FOREIGN COUNTRY FOREIGN NATION |

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 ORIGINAL PROCEEDING
☐ 2 REMOVED FROM STATE COURT
☐ 3 REMANDED FROM APPELLATE COURT
☐ 4 REINSTATED OR REOPENED
☐ 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
☐ 6 MULTIDISTRICT LITIGATION - TRANSFER
☐ 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT
☐ 8 MULTIDISTRICT LITIGATION - DIRECT FILE

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 U.S.C. 1332(d). This is a class action filed by Plaintiffs and all others similarly situated as a result of Defendant's ongoing failure to discharge its duties and obligations as a servicer of Paycheck Protection Program loans.

(IF COMPLEX, CHECK REASON BELOW)

- | | |
|---|---|
| <input type="checkbox"/> 1. Unusually large number of parties. | <input type="checkbox"/> 6. Problems locating or preserving evidence |
| <input type="checkbox"/> 2. Unusually large number of claims or defenses. | <input type="checkbox"/> 7. Pending parallel investigations or actions by government. |
| <input type="checkbox"/> 3. Factual issues are exceptionally complex | <input type="checkbox"/> 8. Multiple use of experts. |
| <input type="checkbox"/> 4. Greater than normal volume of evidence. | <input type="checkbox"/> 9. Need for discovery outside United States boundaries. |
| <input type="checkbox"/> 5. Extended discovery period is needed. | <input type="checkbox"/> 10. Existence of highly technical issues and proof. |

CONTINUED ON REVERSE**FOR OFFICE USE ONLY**

RECEIPT # _____	AMOUNT \$ _____	APPLYING IFP _____	MAG. JUDGE (IFP) _____
JUDGE _____	MAG. JUDGE _____ (Referral)	NATURE OF SUIT _____	CAUSE OF ACTION _____

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)**CONTRACT - "0" MONTHS DISCOVERY TRACK**

- ☐ 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- ☐ 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- ☐ 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- ☐ 110 INSURANCE
- ☐ 120 MARINE
- ☐ 130 MILLER ACT
- ☐ 140 NEGOTIABLE INSTRUMENT
- ☐ 151 MEDICARE ACT
- ☐ 160 STOCKHOLDERS' SUITS
- ☐ 190 OTHER CONTRACT
- ☐ 195 CONTRACT PRODUCT LIABILITY
- ☐ 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- ☐ 210 LAND CONDEMNATION
- ☐ 220 FORECLOSURE
- ☐ 230 RENT LEASE & EJECTMENT
- ☐ 240 TORTS TO LAND
- ☐ 245 TORT PRODUCT LIABILITY
- ☐ 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- ☐ 310 AIRPLANE
- ☐ 315 AIRPLANE PRODUCT LIABILITY
- ☐ 320 ASSAULT, LIBEL & SLANDER
- ☐ 330 FEDERAL EMPLOYERS' LIABILITY
- ☐ 340 MARINE
- ☐ 345 MARINE PRODUCT LIABILITY
- ☐ 350 MOTOR VEHICLE
- ☐ 355 MOTOR VEHICLE PRODUCT LIABILITY
- ☐ 360 OTHER PERSONAL INJURY
- ☐ 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- ☐ 365 PERSONAL INJURY - PRODUCT LIABILITY
- ☐ 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- ☐ 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- ☐ 370 OTHER FRAUD
- ☐ 371 TRUTH IN LENDING
- ☐ 380 OTHER PERSONAL PROPERTY DAMAGE
- ☐ 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- ☐ 422 APPEAL 28 USC 158
- ☐ 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- ☐ 440 OTHER CIVIL RIGHTS
- ☐ 441 VOTING
- ☐ 442 EMPLOYMENT
- ☐ 443 HOUSING/ ACCOMMODATIONS
- ☐ 445 AMERICANS with DISABILITIES - Employment
- ☐ 446 AMERICANS with DISABILITIES - Other
- ☐ 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- ☐ 462 NATURALIZATION APPLICATION
- ☐ 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- ☐ 463 HABEAS CORPUS- Alien Detainee
- ☐ 510 MOTIONS TO VACATE SENTENCE
- ☐ 530 HABEAS CORPUS
- ☐ 535 HABEAS CORPUS DEATH PENALTY
- ☐ 540 MANDAMUS & OTHER
- ☐ 550 CIVIL RIGHTS - Filed Pro se
- ☐ 555 PRISON CONDITION(S) - Filed Pro se
- ☐ 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- ☐ 550 CIVIL RIGHTS - Filed by Counsel
- ☐ 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- ☐ 625 DRUG RELATED SEIZURE OF PROPERTY
- ☐ 21 USC 881
- ☐ 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- ☐ 710 FAIR LABOR STANDARDS ACT
- ☐ 720 LABOR/MGMT. RELATIONS
- ☐ 740 RAILWAY LABOR ACT
- ☐ 751 FAMILY and MEDICAL LEAVE ACT
- ☐ 790 OTHER LABOR LITIGATION
- ☐ 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- ☐ 820 COPYRIGHTS
- ☐ 840 TRADEMARK
- ☐ 880 DEFEND TRADE SECRETS ACT OF 2016 (DTSA)

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- ☐ 830 PATENT
- ☐ 835 PATENT-ABBREVIATED NEW DRUG APPLICATIONS (ANDA) - a/k/a Hatch-Waxman cases

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- ☐ 861 HIA (1395ff)
- ☐ 862 BLACK LUNG (923)
- ☐ 863 DIWC (405(g))
- ☐ 863 DIWW (405(g))
- ☐ 864 SSID TITLE XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- ☐ 870 TAXES (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- ☐ 375 FALSE CLAIMS ACT
- ☐ 376 Qui Tam 31 USC 3729(a)
- ☐ 400 STATE REAPPORTIONMENT
- ☐ 430 BANKS AND BANKING
- ☐ 450 COMMERCE/ICC RATES/ETC.
- ☐ 460 DEPORTATION
- ☐ 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- ☐ 480 CONSUMER CREDIT
- ☐ 485 TELEPHONE CONSUMER PROTECTION ACT
- ☐ 490 CABLE/SATELLITE TV
- ☒ 890 OTHER STATUTORY ACTIONS
- ☐ 891 AGRICULTURAL ACTS
- ☐ 893 ENVIRONMENTAL MATTERS
- ☐ 895 FREEDOM OF INFORMATION ACT 899
- ☐ 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- ☐ 950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- ☐ 410 ANTITRUST
- ☐ 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- ☐ 896 ARBITRATION (Confirm / Vacate / Order / Modify)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ in excess of \$5,000,000

JURY DEMAND ☒ YES ☐ NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE _____

DOCKET NO. _____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- ☐ 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- ☐ 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- ☐ 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- ☐ 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- ☐ 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- ☐ 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

- ☐ 7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS DISMISSED. This case ☐ IS ☐ IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

Maybeth V. Sebrun
SIGNATURE OF ATTORNEY OF RECORD

March 30, 2022
DATE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Kabbage Failed to Process PPP Loan Forgiveness Applications in a Timely Manner, Class Action Claims](#)
