SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ANDREW BORROK** **PART** **53**

Justice

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PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- v -

RICHMOND CAPITAL GROUP LLC,RAM CAPITAL FUNDING LLC,VICEROY CAPITAL FUNDING INC. ALSO DOING BUSINESS AS VICEROY CAPITAL FUNDING AND VICEROY CAPITAL LLC,ROBERT GIARDINA, JONATHAN BRAUN, TZVI REICH, MICHELLE GREGG,

Defendant.

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INDEX NO. 451368/2020

MOTION DATE 01/03/2022, 12/07/2023

MOTION SEQ. NO. 011 014

ORDER – SUPPLEMENTAL (MTN. SEQ. NO. 011)

DECISION + ORDER ON MOTION (MTN. SEQ. NO. 014)

The following e-filed documents, listed by NYSCEF document number (Motion 011) 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 611, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 780, 781, 782, 783, 784, 785, 799, 811, 814, 817, 818, 821, 827, 830

were read on this motion to/for MISCELLANEOUS.

The following e-filed documents, listed by NYSCEF document number (Motion 014) 835, 836, 837, 838, 839, 840, 841, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 860, 861, 862, 863, 864, 865, 868, 869, 870, 871, 875

were read on this motion to/for JUDGMENT - MONEY.

Reference is made to a prior decision of this Court, Decision and Order, dated September 15, 2023 (the **Prior Decision**; NYSCEF Doc. No. 817).

As discussed on the record (2.6.24), in opposition to the entry of Judgment in the amount of $77,298,631 that the NY Attorney General (**NYAG**) sought in connection with the Prior Decision, the Respondents indicated that a portion of the money was principal, not interest, and that under *Adar Bays, LLC v GeneSys ID,* Inc., 37 NY3d 320 (2021), the NYAG is not entitled to

a judgment that includes principal. As to the argument that the NYAG was not entitled to a return of principal (and without examination as to whether the amount sought in the money judgment included principal), the Court agreed. The Respondents did not however demonstrate or proffer evidence as to any portion of the money judgment sought by the NYAG that was principal. Instead, the Respondents argued that the burden was on the NYAG to demonstrate what portion of the money judgment the NYAG sought did not include principal and indicated that they did not have the ability to perform an accounting. As to this, the Court disagreed. The Court ordered the Respondent to produce an accounting to, among other things, show how much of the money judgment sought by the NYAG included principal within 60 days of the September 15, 2023 Decision and Order, *i.e.*, November 14, 2023 and to otherwise demonstrate any other money collected by the Respondents pursuant to MCAs:

> ADJUDGED, ORDERED, and DECREED that the Predatory Lenders shall provide an accounting to the Petitioner of the names and addresses of each merchant from whom the Predatory Lenders collected or received monies since June 10, 2014, in connection with the MCAs and a complete history of all monies collected or received by the Predatory Lenders from such merchants and all monies provided by the Predatory Lenders to such merchants, including principal amounts actually funded together with appropriate backup (to the extent they assert that any amount repaid by the Borrowers was a repayment of principal), within 60 days of this Decision and Order; and it is further
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> ADJUDGED, ORDERED, and DECREED that, in connection with such an accounting, the Predatory Lenders shall pay full restitution and damages to the Petitioner as to all merchants Borrowers that have entered into MCAs with the Predatory Lenders, including those not identified at the time of this order, and such restitution and damages shall include (i) the refund of all amounts taken by the Predatory Lenders from merchants or their guarantors in connection with the MCAs, minus the principal amounts actually funded to the Borrowers and (ii) damages for losses as set forth above within 60 days of this Decision and Order

(Prior Decision at 32).

The Respondents willfully and contumaciously failed to do so. Subsequently, they again argued in sum and substance, that it was the NYAG who had the burden (not them) of demonstrating the amount of money that was their principal and not subject to judgment. They otherwise did not produce the accounting which may well have revealed additional illicit conduct. They also argued (as they had previously) that they did not have the information from their records to be able to perform any such accounting. As discussed then and again on the record today (2.6.24) aside from being legally indefensible (*i.e.*, that the NYAG and the taxpayers should bear the cost of demonstrating what portion of their ill-gotten money was not theirs), the Respondents had the processing company's records available to them and also had their own records unless they deliberately spoliated them to avoid money judgment (*e.g.*, NYSCEF Doc. No. 852).

Having failed to perform the required accounting ordered by this Court so that the Respondents could seek reduction of the money judgment amount sought by the NYAG by any amount that they could demonstrate was principal and not interest (and by their own admitted disposal of material and relevant information including Mr. Braun's computer after they were aware of the NYAG's investigation), they cannot now complain that the NYAG is not entitled to the entire amount of the judgment that the NYAG sought or that they lack sufficient information to demonstrate what portion of the money judgment sought by the NYAG includes principal. To hold otherwise would twist logic beyond all recognition. Thus, entry of a monetary judgment is appropriate at this time in the amount sought by the NYAG and the NYAG may email a copy of the proposed order to Part 53 and otherwise serve the Proposed Judgment on notice by uploading it to NYSCEF.

To the extent that the NYAG seeks authority to submit supplemental judgments if it uncovers additional MCAs that would otherwise be subject to the previous findings of this Court, the NYAG may move by order to show cause seeking to amend the judgment or seeking additional or supplemental judgment so that the issue can be fully briefed and the Court can make a decision on a fully developed record at any such time.

The Respondents may move by order to show cause seeking an amendment to the judgment to the extent they are able to establish by credible evidence (which would include a full audited accounting by a third party of the MCAs), any amount of such judgment which they establish is principal such that the judgment should be reduced by that amount.

Although the Respondents do not dispute that they have not vacated the entry of judgment as was required by this Court such that it appears that a finding of criminal contempt is appropriate at this time because there has been a willful disobedience of this Court's lawful and unequivocal mandate of which Respondents were certainly aware (*Matter of Dept. of Envtl. Protection of City of New York v Dept. of Envtl. Conservation of State of N.Y.*, 70 NY2d 233, 240 [1987]; Judiciary Law § 750[A][3]), the NYAG shall serve an order on notice by uploading such order to NYSCEF identifying each and every judgment that the Respondents are required to vacate or to move to vacate. The NYAG shall present such order for the Court's signature by February 19, 2024 at 5 pm. The Respondents shall have until March 21, 2024 at 5 pm to make appropriate application to have those judgments (and any other judgments that the Respondents are aware of) vacated. They shall provide evidence of their diligent prosecution of the same to the NYAG by such date. If they fail to do so, they shall be held in criminal contempt and among other

sanctions considered by this Court, they shall jointly and severally be required to pay $5,000 per day until they move to have such judgments vacated. For the avoidance of doubt, any delay in processing the vacating of the judgment shall not be grounds for a finding of criminal contempt. What is required by the order is moving to have the judgments vacated (and not merely satisfied) and prosecuting the same to completion. A status conference shall be held on April 15 at 11:30 am, at which time this Court may issue a supplemental order if appropriate.

The Court notes that Viceroy Capital was in default and the NYAG does not seek to have it held in contempt (NYSCEF Doc. No. 832).

The Attorney General may submit judgment on Notice.

Inasmuch as certain of the Respondents have not paid $2,000 pursuant to CPLR 8303(a)(6) as previously ordered, the NYAG may submit judgment on notice as to those Respondents for this Court's signature by February 19, 2024 at 5 pm.

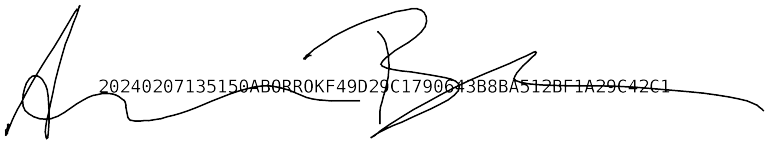
The Court has considered Respondents remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that the Attorney General submit a judgment on notice for the Court's signature within 60 days; and it is further

ORDERED that the Attorney General shall submit a proposed order identifying each and every judgment the Respondents are required to vacate or move to vacate by February 19, 2024 at 5 pm; and it is further

ORDERED that the Attorney General shall submit judgment on notice as to those Respondents who have not yet paid the $2,000 pursuant to CPLR 80303(a)(6) by February 19, 2024 at 5 pm.



2/6/2024
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**			
	[X]	**GRANTED**	[ ] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**	
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**			
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**	