

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of the
State of New York,

Petitioners,

-against-

RICHMOND CAPITAL GROUP LLC, also
doing business as Ram Capital Funding and
Viceroy Capital Funding, and now known
as RCG Advances LLC;

RAM CAPITAL FUNDING LLC;

VICEROY CAPITAL FUNDING INC., also
doing business as Viceroy Capital Funding;

ROBERT GIARDINA, individually and as a
principal of RICHMOND CAPITAL GROUP
LLC, RAM CAPITAL FUNDING LLC, and
VICEROY CAPITAL FUNDING INC.;

JONATHAN BRAUN, also known as John
Braun, individually and as a principal of
RICHMOND CAPITAL GROUP LLC, RAM
CAPITAL FUNDING LLC, and VICEROY
CAPITAL FUNDING INC.;

TZVI REICH, also known as Steve Reich,
individually and as a principal of
RICHMOND CAPITAL GROUP LLC, RAM
CAPITAL FUNDING LLC, and VICEROY
CAPITAL FUNDING INC.; and

MICHELLE GREGG, individually and as a
principal of RICHMOND CAPITAL GROUP
LLC, RAM CAPITAL FUNDING LLC, and
VICEROY CAPITAL FUNDING INC.;

Respondents.

Index No. _____

IAS Part _____

Assigned to Justice _____

**AFFIRMATION OF JOHN P. FIGURA
IN SUPPORT OF THE VERIFIED PETITION**

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John P. Figura, an attorney duly admitted to practice before the courts of the State of New York, affirms the following under the penalty of perjury:

1. I am an Assistant Attorney General in the Office of Letitia James, Attorney General of the State of New York, assigned to the Bureau of Consumer Frauds and Protection. I submit this Affirmation in support of the Verified Petition (“Petition”) and the relief sought therein. I am familiar with the facts and circumstances of this proceeding, which are based upon information contained in the investigative files of the Attorney General.

PRELIMINARY STATEMENT

2. Since at least 2015, Respondents have been in the business of marketing, issuing, and collecting upon “merchant cash advances,” a form of high-interest, short-term funding for small businesses. The cash advances carry interest rates in the triple and even quadruple digits. Respondents have issued more than 1,900 merchant cash advances between 2015 and 2019 and have collected from merchants more than \$77 million in payments.

3. Respondents call each merchant cash advance a “Purchase and Sale of Future Receivables.” In theory, a merchant cash advance issuer provides a merchant with a lump sum payment in exchange for payments equal to a share of the merchant’s future sales proceeds, or “receivables.” An issuer may adjust or “reconcile” the amounts of the merchant’s payments depending on the merchant’s actual receivables. As a result, under New York law a merchant cash advance does not have fixed payment amounts or a finite payment term.

4. As set forth herein, Respondents' labeling of their transactions as purchases and sales of receivables is a ruse. In fact, they market, underwrite, and collect upon the transactions as if they are loans. Because the transactions have annual interest rates far above the 16% threshold that defines usury under New York law, the so-called merchant cash advances are in fact usurious loans.

5. Respondents Richmond Capital Group LLC ("Richmond"), Ram Capital Funding LLC ("Ram"), and Viceroy Capital Funding Inc. ("Viceroy") are the entities responsible for the merchant cash advances. Individual Respondents Giardina, Braun, Reich, and Gregg have operated Richmond, Ram, and Viceroy during the times relevant to this Petition.

6. Respondents market their advances to small businesses that are short of capital and unable to quickly get small business loans from traditional banks. Respondents market and service the merchant cash advances as loans. They require merchants to repay the loans through daily payments at fixed amounts, which are debited from merchants' bank accounts each day at amounts ranging from \$149 to \$14,999. They plan for the loans to be repaid in short terms, such as 60 days, at annual interest rates in the triple and quadruple digits.

7. Respondents regularly defraud the merchants to whom they loan money. They issue advances in smaller amounts than represented, charge fees greater than disclosed, and withdraw money from merchants' bank accounts in larger amounts, for longer durations, and more frequently than the merchants agreed to pay. Respondents represent that they will arrange flexible repayment plans if a merchant is unable to make its daily payments, and they state in their

agreements that they will “reconcile” the amounts of merchants’ payments based on a percentage of merchants’ actual receipts, or “receivables.” These representations are false. In fact, Respondents debit payments from merchants’ bank accounts at fixed amounts that do not change from day to day and that Respondents do not reconcile based on the performance of merchants’ businesses.

8. Respondents use unconscionable tactics to obtain merchants’ signatures on their cash advance agreements. They target merchants at times of financial desperation, use misrepresentations in their marketing and in their agreements, change the terms of agreements at the last minute, and print their agreements in tiny, even illegible type. Respondents’ agreements are also replete with unconscionable clauses. These include clauses allowing Respondents, in the event of certain forms of default, to obtain and execute judgments against merchants and their guarantors by filing confessions of judgment previously signed by them in New York courts – regardless of whether the merchants and guarantors are located in New York – with no notice, no proof of default aside from Respondents’ self-serving (and often false) affidavits, and no judicial review. On information and belief, Respondents have obtained judgments in this way against more than 400 merchants.

9. Respondents create a climate of intimidation and fear to discourage merchants from missing their payments or from questioning Respondents’ tactics, typically through phone calls made by Respondent Braun. Braun has regularly called merchants’ representatives and harassed, insulted, sworn at, and threatened

them. He has told them that he knows where they live and has threatened to seize their assets, destroy their businesses, and do violence to them and their families.

10. Respondents inflict immense financial and personal harm upon the merchants they purport to help. They wrongly obtain judgments against merchants, strip money from their bank accounts, and force them into downward spirals of unending debt. Merchants have been forced to take desperate measures to deal with their purported debts to respondents.

11. The facts of Richmond's conduct, based on the Attorney General's investigation, are set forth below.

THE ATTORNEY GENERAL'S INVESTIGATION

12. Prior to bringing this special proceeding, the Office of the New York State Attorney General ("NYAG") conducted an extensive investigation of Respondents. The investigation began in December 2018 after publication by the financial news periodical *Bloomberg* of an investigative exposé that reported that Richmond, under Jonathan Braun's leadership, had caused small-business merchants to enter into loans with triple-digit interest rates, used confessions of judgment to quickly obtain and execute judgments against merchants, and left merchants in financial ruin as a result. Ex. 17 ¹ (Zachary R. Mider & Zeke Faux, "Sign Here to Lose Everything, Part 4: Marijuana Smuggler Turns Business-Loan Kingpin While out on Bail," *Bloomberg* (Dec. 3, 2018),

¹ All exhibits cited herein are exhibits to this Affirmation unless otherwise noted.

<https://www.bloomberg.com/graphics/2018-confessions-of-judgment-marijuana-smuggler-turns-business-loan-kingpin/>.²

13. As part of its investigation, the NYAG served upon Richmond investigative subpoenas pursuant to Executive Law § 63(12) dated December 4, 2018 and December 14, 2018. Exs. 4 and 5. In response, Respondents produced to the NYAG over the following months over 27,000 documents, including thousands of agreements of Richmond, Ram, and Viceroy, *e.g.*, Exs. 1-3, and thousands of internal emails exchanged among Giardina, Braun, Reich, Gregg, and others. Documents produced by Respondents to the NYAG bear Bates numbers beginning with the prefix “RCLG.”

14. The NYAG also reviewed hundreds of publicly available documents filed in New York State Supreme Court concerning Respondents’ cash advance business, including confessions of judgment and affidavits filed by Respondents, judgments issued by courts in reliance on those documents, and documents of merchants challenging such judgments in motions to vacate and other applications.

² The article on Richmond was part of a five-part series of articles by *Bloomberg* reporting on the merchant cash advance industry. Zachary R. Mider and Zeke Faux, *et al.*, “Sign Here to Lose Everything, Part 1: I Hereby Confess Judgment,” Nov. 20, 2018; “Part 2: The \$1.7 Million Man,” Nov. 27, 2018; “Part 3: Rubber-Stamp Justice,” Nov. 29, 2018; “Part 4: Marijuana Smuggler Turns Business-Loan Kingpin While out on Bail,” Dec. 3, 2018; “Part 5: Fall Behind on These Loans? You Might Get a Visit from Gino,” Dec. 20, 2018; *each article available at* <https://www.bloomberg.com/confessions-of-judgment>; *see also* Zeke Faux and Max Abelson, “Inside Trump’s Most Valuable Tower: Felons, Dictators and Girl Scouts,” *Bloomberg*, June 22, 2016, *available at* <https://www.bloomberg.com/graphics/2016-trump-40-wall-street/> (reporting complaint that Viceroy had “charg[ed] a 299 percent annualized interest rate”). Exs. 14-19.

15. The NYAG has conducted interviews with numerous merchants that have obtained merchant cash advances from Respondents. Filed with this Affirmation are twelve affidavits by such merchants with supporting exhibits thereto. Exs. 43 through 99.

16. During its investigation the NYAG conducted testimonial hearings under oath of numerous former employees, affiliates, and representatives of Respondents pursuant to testimonial subpoenas issued pursuant to Section 63(12). Excerpts of transcripts of these hearings are attached here as Exhibits 39 through 42. Most of these witnesses invoked the Fifth Amendment and did not answer questions concerning Respondents' business practices. *See generally* Exs. 39-42.

17. Among Respondents, only Braun appeared in response to a testimonial subpoena. *See generally* Ex. 38 (Tr. of Testimonial Hr'g of Jonathan Braun ("Braun Tr."), excerpted). The NYAG also issued subpoenas for the testimony of Respondents Giardina, Gregg, and Reich. Giardina and Gregg petitioned to quash their subpoenas and stay their testimony, arguing, *inter alia*, that they should not be compelled to testify because "in their capacities as officers of Richmond Capital Group LLC, [they] were the subjects of federal and state criminal investigations." *Giardina v. James*, No. 156209/19, at 1 (Sup. Ct. N.Y. Cnty. Oct. 29, 2019) (attached as Exhibit 8). Justice Lynn R. Kotler of New York State Supreme Court for New York County denied their application and granted the NYAG's cross-motion to compel their testimony by order dated October 29, 2019. *Id.* at 2-3. Giardina and Gregg filed an appeal of Justice Kotler's decision in the Appellate Division for the First Department, but the court has not yet ruled on it. Reich has failed to appear

for his scheduled testimony, also invoking a pending criminal proceeding, but has not moved for an order to quash the subpoena or for a stay.

FACTS

I. RESPONDENTS

A. Richmond Capital Group LLC

18. Richmond Capital Group LLC is a domestic limited liability company organized under New York law on October 25, 2013. Ex. 6 at 1 (N.Y. Dep't of State, "Entity Information" for Richmond). Respondents Giardina and Braun have testified that Richmond has done business under the names "Ram Capital Funding" and "Viceroy Capital Funding." Ex. 7 (Affidavit of Robert Giardina, filed in *Giardina v. James*, No. 156209/2019 (Sup. Ct. N.Y. Cnty.) ("Giardina Aff.)) ¶ 3 n.1; Ex. 38 (Braun Tr.) at 17:8-17.

19. On May 6, 2019, Richmond filed papers with the New York Department of State to rename itself "RCG Advances, LLC." Ex 6 at 1. Because this name change occurred after most of the events discussed below, the company is referred to here as "Richmond."

B. Ram Capital Funding LLC

20. Ram Capital Funding LLC ("Ram") is a limited liability company organized under New Jersey law. Ex. 6 at 2 (N.Y. Dep't of State, "Entity Information" for Ram (last visited Dec. 9, 2019)).

21. Ram's offices are located in New York County. See Ex. 38 (Braun Tr.) at 23:21-25, 26:4-16. It has also used in its business correspondence an address located in Lakewood, New Jersey. *E.g.*, Ex. 108 at RCLG000077358.

22. Ram is owned by Steve Reich. Ex. 38 (Braun Tr.) at 18:17-20.

C. Viceroy Capital Funding Inc.

23. Viceroy Capital Funding Inc. is a domestic business corporation organized under New York law and registered with the New York Department of State as a corporation on March 19, 2015. Ex. 6 at 3 (N.Y. Dep’t of State, “Entity Information” for Viceroy (last visited Dec. 9, 2019)).

24. Viceroy Capital Funding Inc. is located at 40 Wall Street, 28th Floor, New York, New York 10005. *Id.* “Viceroy Capital Funding,” which Giardina has admitted is an alias of Richmond, *supra* ¶ 18, has used the same 40 Wall Street address in its business correspondence, Ex. 268 at RCLG00000988.

25. Neither Richmond nor Ram nor Viceroy is licensed as a lender under New York law. *See* Department of Financial Services, “Who We Supervise,” <https://myportal.dfs.ny.gov/web/guest-applications/who-we-supervise> (last visited Mar. 10, 2020) (showing no licenses listed for Richmond, Ram, or Viceroy).

D. Robert Giardina

26. Robert Giardina is on information and belief a resident of Richmond County, New York, and is the owner of Richmond, “Ram Capital Funding,” and “Viceroy Capital Funding.” Ex. 7 (Giardina Aff.) ¶ 3 n.1. Giardina is “Managing Partner” of Richmond, *e.g.*, Ex. 102 at RCLG000052426, and oversees its operations, Ex. 38 (Braun Tr.) 17:5-7, 22:21-23:18.

E. Jonathan Braun, a.k.a. John Braun

27. Jonathan Braun, who has also used the name “John Braun,” has been a principal of Richmond, Ram, and Viceroy. Braun is currently an inmate at Federal Correctional Facility Otisville in Otisville, New York.

28. On May 27, 2010, Braun was indicted in United States District Court for the Eastern District of New York on criminal charges related to an alleged drug trafficking conspiracy. Ex. 10 (Indictment). On November 3, 2011, Braun pled guilty to charges of conspiracy to import marijuana and money laundering conspiracy in violation of federal law. Ex. 9 at 6-7 (Docket Report), Ex. 11 at 1, 5 (Superseding Indictment). The court ordered on November 10, 2011 that Braun be released from custody on an \$8 million bond, subject to the supervision of the United States Pretrial Services Agency. Ex. 12 at 1 (Bond Order).

29. During seven-plus years that passed while Braun was free on bond under the Pretrial Service Agency's supervision, Braun led Respondents in operating their merchant cash advance business, as set forth herein. On May 28, 2019, Braun was sentenced in the Eastern District to a term of 10 years' imprisonment. Ex. 13 (Criminal Cause of Sentencing).

F. Tzvi "Steve" Reich

30. Tzvi Reich, who works under the name "Steve Reich," owns Ram and is its principal decision-maker. Ex. 38 (Braun Tr.) at 18:17-19:11; *see also* Ex.23 (Profile of Steve Reich, *LinkedIn*, <https://www.linkedin.com/in/steve-reich-6601aaa4> (last visited June 9, 2020) (page from the social media site LinkedIn in which Reich advertises himself as Ram's "Funding Specialist" from "2016 – Present"). Reich is also a principal decision-maker for Richmond and Viceroy, as set forth herein.

31. On information and belief Reich is a resident of the state of New Jersey.

G. Michelle Gregg

32. Michelle Gregg is a resident of New York County and is “Managing Director” and “Director of Finance” of both Richmond and Viceroy. *E.g.*, Ex. 161 at RCLG00024203 (email from Gregg identifying her as Richmond’s “Managing Director”); Ex. 268 at RCLG0000988 (email from Gregg identifying her as Viceroy’s “Managing Director”); Ex. 191 ¶ 2 (affidavit by Gregg identifying herself as Richmond’s “Director of Finance”); Ex. 248 at RCLG000157689-1 (email from Gregg identifying her as Viceroy’s “Director of Finance”).

II. RESPONDENTS’ ILLEGAL AND FRAUDULENT BUSINESS PRACTICES

33. Respondents engage in illegal and fraudulent tactics in marketing, issuing, and servicing their merchant cash advances.

34. Respondents prey on merchants at moments of financial desperation, when they are in need of cash and are unable to get small business loans from traditional banks. For example, a broker working with Richmond contacted Jerry Bush, owner of J.B. Plumbing & Heating of Virginia Inc. (“J.B. Plumbing”), located in Richmond, Virginia, after the merchant’s bank, Wells Fargo, declined its request for a small business loan. Ex. 61 (Bush Aff.) ¶¶ 2-4. A customer of J.B. Plumbing had failed to pay a \$350,000 invoice, and the company was receptive to Richmond’s pitch because the business needed cash to pay its expenses. *See id.*; *see also, e.g.*, Ex. 48 (Auboine Aff.) ¶ 3 (merchant was “in need of short-term capital to meet [its] expenses”); Ex. 20 at 4 (Richmond Capital Group, “Do you know business owners . . . ,” <http://www.richmondcapitalgroup.com/iso-agents.html> (last visited June 6, 2020) (stating that Richmond markets to “small business owners . . . looking for funding”

who are unable to get credit from “banks and traditional lenders”). Ex. 21 at 2 (Ram Capital Funding, <http://ramcapitalfunding.com/Home/#scrolltop> (last visited June 6, 2020)) (stating that Ram’s “clients” need “funding for temporary cash flow needs”).

35. Respondents subject such merchants to usurious interest rates, fraudulent misrepresentations, unconscionable contracts, and harassment, as set forth below.

A. Respondents’ Merchant Cash Advances Bear the Telltale Signs of Loans and Are Issued at Usurious Interest Rates

36. Respondents’ marketing practices, the text of their agreements, and their servicing of their merchant cash advances show that the advances are not purchases of merchants’ receivables but instead usurious loans.

1. Respondents Market Their Merchant Cash Advances as Loans

37. Respondents market their merchant cash advances as “loans” and their companies as “lenders” in both their advertising and in their direct communications with merchants. In its website, Ram advertises:

As a private lender, Ram Capital Funding takes pride in investing in projects that traditional banks may deny, or may take months to approve. Our rapport with the borrowers can be summarized as a partnership for the duration of the loan

Ex. 21 at 2; *see also id.* (discussing Ram’s “lending decisions”); *id.* at 3 (“Ram Capital Funding provides you with a partnership for the life of your loan.”).

38. Richmond also advertises its cash advances as “loans,” as shown here:

Have a few questions? **We have the answers!**

Here are some inquiries that you may ask when applying for a business loan.

Ex. 20 at 5 (Richmond Capital Group, “Have a few questions?”

<http://www.richmondcapitalgroup.com/faq.html> (last visited June 6, 2020)).

How quickly will I receive my loan?

Most Loans are completed and money your business account within 48 hours.

Id.

39. The “loans” that Ram and Richmond advertise are simply another name for their merchant cash advances.

40. Respondents provide no products or services apart from their merchant cash advances. *See* Ex. 38 (Braun Tr.) at 14:10-14 (Richmond provided no product besides merchant cash advances); *id.* at 37:20-24 (Braun was unaware of Ram lending money apart from its merchant cash advance business).

41. Respondents and the brokers they work with market their cash advances as “loans” when communicating directly with merchants.

- Michael Gianni, owner of Touch Plate Properties, LLC (and the related company Touch Plate Ink, LLC), located in Concord, California, was contacted by a broker working with Richmond who told him, “We lend money to businesses like yours,” and said he could provide funding in the form of a “short term loan.” Ex. 69 (Affidavit of Michael Gianni (“Gianni Aff.”)) ¶ 3. Gianni was later contacted by Braun, who asked him, “Are you ready to take our loan?” and said, “We’ll go ahead and loan you the money.” *Id.* ¶ 8.
- Michael Pennington, owner of Bionicle Plumber, LLC, in Mesa, Arizona, was offered a “merchant loan” by a broker working with Ram. Ex. 85 (Affidavit of Michael T. Pennington (“Pennington Aff.”)) ¶¶ 1-2. The broker consistently described Ram’s cash advances “as ‘loans,’ using terms such as ‘merchant loan,’ ‘daily merchant loan,’ and ‘short-term loan.’” *Id.* ¶¶ 8, 18.
- Braun contacted Nabih Kadri, owner and president of Smart Courier Inc., based in Mebane, North Carolina, and “used the word ‘borrowing’ when he referred to the act of taking a merchant cash advance from Richmond.” Ex. 75 (Affidavit of Nabih Kadri (“Kadri Aff.”)) ¶¶ 1, 3.

- Richmond representative Miriam Deutsch, working under the false name “Mary Clark,”³ pitched Richmond’s merchant cash advances to Paul Price, general counsel of Optimis Corp., a medical sciences company located in Los Angeles, California. Ex. 91 (Affidavit of Paul Price (“Price Aff.”)) ¶ 3. Deutsch “repeatedly referred to providers of cash advances as ‘lenders’ and the act of receiving a merchant cash advance as ‘borrowing.’” *Id.*⁴

42. Respondents and the brokers they work with represent to merchants in their marketing that cash advances are to be repaid at fixed amounts and according to finite repayment terms, like loans.

- Ram advertises “short-term, 3 to 12 months, working capital” in its website. Ex. 21 at 2.
- Nabih Kadri, owner of Smart Courier, was told by Braun and another Richmond representative that a cash advance “would involve daily payments at a set amount and would be repaid over a set repayment period, such as a 50-day payment period or a 3-month payment period.” Ex. 75 (Kadri Aff.) ¶ 3.
- John Brewer, owner and president of Wyldewood Cellars, Inc., a winery based in Peck, Kansas, testifies, “Mr. [Steve] Reich told me that

³ Miriam Deutsch alternately uses the false names “Mary Clark,” “Mimi Parker,” and “Mindy Stone” when communicating with merchants. Ex. 38 (Braun Tr.) at 190:17-191:4 (testifying that Deutsch used the names “Mary Clark” and “Mimi Parker”); *see* Ex. 215 at RCLG000143592 *and* Ex. 270 at RCLG000149792 (emails from “Mary Clark” and “Mindy Stone” stating in their signature lines the same mobile phone number, 213-944-0877).

⁴ *See also* Ex. 72 (Affidavit of Kelly T. Hickel (“Hickel Aff.”)) ¶¶ 2-3 (broker working with Ram discussed obtaining a “loan’ . . . in the form of a merchant cash advance”); Ex. 98 (Affidavit of Adrien F. Theriault (“Theriault Aff.”) ¶ 3 (broker working with Ram discussed obtaining “a short-term loan . . . in the form of a merchant cash advance”); Ex. 61 (Bush Aff.) ¶ 4 (broker discussed getting a “loan” from Respondents and referred to Richmond as a “lender” and to merchant as a “borrower”); Ex. 48 (Affidavit of Jean-Marie Aboine (“Aboine Aff.”)) ¶ 4 (broker described a cash advance from Richmond as a “loan”); Ex. 79 (Affidavit of Michael Kramer (“Kramer Aff.”) ¶ 4 (broker working with Richmond discussed obtaining funding from a “cash advance lender”).

Ram's advance had a total repayment amount of \$59,600, which would be paid off in 60 daily payments of \$999. Consistent with that description, I understood Ram's cash advance to be a short-term loan." Ex. 57 (Affidavit of John A. Brewer ("Brewer Aff.)) ¶ 8. A broker had previously told the merchant's financial adviser that Ram's advance was a "loan" and a "short-term agreement" that "was to be paid off in 60 daily payments of \$999 each." Ex. 72 (Hickel Aff.) ¶ 6.

- A broker working with Ram described a merchant cash advance from Ram to Wyldewood Cellars "as a 'loan' and a 'short-term agreement,'" which was "to be paid off in 60 daily payments of \$999 each." Ex. 72 (Hickel Aff.) ¶ 6.
- Richmond representative Miriam Deutsch, posing as "Mary Clark," *supra* ¶ 41 n.3, described a "merchant cash advance as involving a daily payment at an unchanging, set amount" and said the merchant Optimis Corp. "would receive an advance that would be repaid in a period of 6 months." Ex. 91 (Price Aff.) ¶¶ 3-4. "Ms. Clark had informed us that Richmond would simply debit Optimis's account by a set daily amount for a 6-month period, and that is how I understood from her that the transaction would work in practice." *Id.* ¶ 14. *See also id.* ¶ 19 (Richmond representative told Optimis "the term of repayment . . . would need to be shortened from 6 months to 3 months").
- A broker working with Richmond told Jerry Bush, of J.B. Plumbing, that Richmond would provide a loan "subject to a finite repayment term, measured in a number of days." Ex. 61 (Bush Aff.) ¶ 4. Another broker described Richmond's advance to Bush as "60,000 paying back \$89,940 over 4.5 months @ \$999/day." *Id.* ¶ 7. The broker then sent Bush a Richmond agreement that "indicated a term of 90 business days . . . or 4.5 months, exactly as [the broker] had stated." *Id.* ¶ 8.
- A broker working with Ram offered Michael Pennington, of Bionicle Plumber, a loan "for a short repayment term," said that it "would involve a daily payment at a set amount," and "regularly described Ram's cash advances as being subject to specific repayment terms, which she usually expressed in a number of months, such as a loan with a '5-month term.'" Ex. 85 (Pennington Aff.) ¶¶ 2, 8. When Pennington told the broker that Ram's interest rate "appeared to be very high," she told him that it "appeared high only because it was a short-term loan." *Id.* ¶ 6; *see also id.* ¶ 38 (testifying that the broker told him "the loans from Ram were based [on] set daily payments").
- A broker working with Ram told Adrien Theriault, of MRM Consulting, Inc., based in Westport, Connecticut, that an advance from Ram

“would be required to be repaid over a term of payments” and that the number of payments was 41. Ex. 98 (Theriault Aff.) ¶ 7.

- Braun told Michael Gianni, owner of touch Plate Properties, that his business “would be required to make daily payments at a set amount.” Ex. 69 (Gianni Aff.) ¶ 7. A broker told Gianni that Richmond could provide either a “‘short term loan’ or a ‘longer term.’” *Id.* ¶ 3

43. Merchants understand from Respondents’ marketing communications and agreements that the cash advances are loans. Merchants refer to cash advances as “loans” in their communications with Respondents, and Respondents have not disputed the characterization. *E.g.*, Ex. 160 at RCLG000073456 (email to Braun from merchant stating, “We appreciate you handling our loan”); Ex. 141 at RCLG000079033 (email to Reich from merchant concerning a cash advance with the subject line, “Re: Loan”); Ex. 264 at RCLG000112679 (email to Braun from merchant with the subject line, “RCG Loan”).⁵

44. Respondents’ marketing of their cash advances as loans comports with a common perception in the financial industry and among small businesses that merchant cash advances are in fact loans. For example, JMA Chocolates, LLC (JMA), a Richmond advance recipient based in Las Vegas, was contacted in June 2019 by a debt consolidation consultant who was referred to it by Respondent Gregg. Ex. 56 (Auboine Aff. Ex. H). The consultant offered to help JMA if it was

⁵ Merchants regularly refer to “loans” in the computer file names they choose when saving copies of their signed agreements with Respondents, which Respondents then circulate among themselves. *E.g.*, Ex. 104 at RCLG000072524 (Respondents circulating signed documents for a Ram advance saved with the file name “Ram Capital Loan”); Ex. 164 at RCLG000110876 (Respondents circulating signed documents for a Viceroy advance saved with the file name “Loan”); Ex. 123 at RCLG000089675 (Respondents circulating signed documents for a Richmond advance saved with the file name “Richmond Capital Loan”).

having difficulties paying its “Cash Advance Loans.” *Id.* Financial news periodicals also express the commonly held belief that merchant cash advances are loans. *E.g.*, Ex. 35 at 3 (“4 Ways to Solve Cash Flow Problems, *CPA Practice Advisor* (July 25, 2018), <https://www.cpapracticeadvisor.com/accounting-audit/news/12422061/4-ways-to-solve-cash-flow-problems> (“A merchant cash advance loan can help when you need a sizeable amount of money in a short period of time.”)).⁶

2. Respondents’ Agreements, Like Loan Agreements, Provide for Fixed Payment Amounts and Indicate Finite Repayment Terms

45. After a merchant agrees to apply for a cash advance, Respondents send the merchant a draft “Merchant Agreement” to sign. Respondents’ agreements are printed in minuscule type. Until late 2017 and early 2018, Respondents printed their Merchant Agreements in illegible type of about a 4-point size, as shown below:

⁶ See also, *e.g.*, Ex. 37 (Catherine Way, “4 Benefits of Merchant Cash Advances,” *PaymentsJournal* (May 21, 2019), <https://www.paymentsjournal.com/4-benefits-of-merchant-cash-advances/>) (“Merchant Cash Advances are asset-based loans that are perfect for small business that wants to use their future sales today.”); Ex. 36 (Karsten Strauss, “5 Ways to Avoid Taking VC Money While Growing Your Business,” *Forbes* (Mar. 19, 2013), <https://www.forbes.com/sites/karstenstrauss/2013/03/19/5-ways-to-avoid-taking-vc-money-while-growing-your-business/#528e9ff44902>) (referring to merchant cash advances as “loan[s]” issued by “merchant cash advance lender[s]”).

Ex. 99 (Theriault Aff.) Ex. A at RCLG000079113; *see also, e.g.*, Ex. 183 at RCLG000104543 (Feb. 27, 2018 Viceroy agreement with Legal Risk Services, Inc.). Respondents’ use of small type makes their agreements extremely difficult, if not impossible, for merchants to read and understand. Ex. 98 (Theriault Aff.) ¶ 5.

46. Consistent with loan agreements, each agreement states a fixed daily payment amount, which is called either a “Specific DAILY Amount” or an “Estimated Daily Amount.” *E.g.*, Ex. 183 at RCLG000104542 (Viceroy agreement with Legal Risk Services); Ex. 120 at RCLG000098909 (Ram agreement with Bionicle Plumber).

47. Respondents’ agreements are also consistent with loan agreements in that they indicate finite repayment terms. Each agreement states both a fixed daily payment amount and a total repayment amount, which is called a “Total Purchased Amount.” *E.g.*, Ex. 218 at RCLG000086674. For example, Ram’s cash advance to Precision Plant Services, Inc. states a repayment amount of \$59,960 and a “Specific DAILY Amount” of \$999, as shown here:

Total Purchase Price: \$40,000.00	Specified Percentage: 10 %	Specific DAILY Amount: \$ 999.00	Total Purchased Amount: \$ 59,960.00
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Id.

48. When the total repayment amount is divided by the daily payment amount, the result is the finite term of the advance. Here, the term for Ram’s advance to Precision Plant Services was “60 days” ($\$59,960 \div \$999 = 60$), as Reich stated in an email to Giardina and Braun, among others. *Id.* at RCLG000086673 (email from Reich describing agreement as “[r]evised to 40k and 60 days”); *see also* Ex. 91 (Price Aff.) ¶ 8 (testifying that the terms of a merchant agreement indicated

that “Richmond’s advance would have a 6-month repayment term, just as [Richmond representative] Ms. Clark had said it would.”).

49. Respondents repeat the fixed daily amount in a form they call an “Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits),” which they require merchants to complete in order to receive a cash advance. *E.g.*, Ex. 218 at RCLG000086678.⁷ This form (“ACH Debit Form”) memorializes merchants’ consent for Respondents to debit money from their bank accounts. *Id.* For example, Ram’s ACH Debit Form for Precision Plant Services, as shown below, states a fixed daily payment amount of \$999 to be withdrawn “Monday – Friday.”

I, (We) PRECISION PLANT SERVICES, INC. Hereby Authorize, Ram Capital Funding, LLC
(Hereinafter known as “RCF”) to Electronically (ACH) debit the Bank Account Below, of which I am a
signer:

Bank Name: EAST WEST BANK Branch: PARK VILLAGE

ABA: Routing: 061103894 DDA: Account: [REDACTED] For the
amount of: \$ 999.00 (Or) Percentage of each Banking Deposit: % N/A

On the Following Days: MONDAY - FRIDAY

*Id.*⁸ This \$999 amount is the same amount stated as the “Specific DAILY Amount” in Ram’s Merchant Agreement with the merchant shown above. *Supra* ¶ 47.

⁷ “ACH” is an abbreviation for “Automated Clearing House,” an electronic funds-transfer system. “Automated Clearing House (ACH),” *Investopedia*, <https://www.investopedia.com/terms/a/ach.asp> (last visited June 7, 2020).

⁸ Social security numbers, tax identification numbers, bank account numbers, and bank account access information are redacted from the exhibits to this Affirmation. Merchants’ home addresses are redacted except in the case of documents previously filed in New York State Supreme Court and publicly available via NYSCEF.

50. Respondents' ACH Debit Forms show that the fixed daily amounts are the only amounts they debit from merchants' bank accounts – and that they do not adjust such amounts based on a percentage of the merchants' receivables. The form includes a line where Respondents can enter a "Percentage of each Banking Deposit" to calculate merchants' debits, but Respondents either fill in this line with "N/A," as shown above, or leave the line. *E.g.*, Ex. 11 at RCLG00098916.

51. Respondents also regularly do not state in their Merchant Agreements a Specified Percentage – the percentage that purportedly determines the process of payment reconciliation, *infra* ¶¶ 113-14; *see also infra* ¶¶ 63-68 – but instead leave that portion of the agreement blank, as shown here:

Total Purchase Price: \$30,000.00 Specified Percentage: % Estimated Daily Amount: \$ 699.00 Total Purchased Amount: \$ 44,970.00

Gianni Aff. Ex. 70 Ex. A at RCLG000049775 (Richmond agreement with Touch Plate Properties); *see also* Gianni Aff. Ex. 69 ¶ 17 ("At no point did Richmond discuss with me what this 'Specified Percentage' meant or what value (if any) should have been entered in the blank."); *accord* Ex. 75 (Kadri Aff.) ¶ 8 (Richmond agreement showed no Specified Percentage); Ex. 85 (Pennington Aff.) ¶ 38 (Ram agreement showed no Specified Percentage).

52. Respondents' failure to enter a percentage of receivables in their ACH Debit Forms or their agreements shows that their practice is to debit merchants' bank accounts not by any percentage but only by fixed daily amounts, which result in finite repayment terms. *See id.* ("As Erica had explained to me from the beginning of Bionicle's relationship with Ram, the loans from Ram were based [on] set daily payment amounts, not on a percentage of our credit card receipts.").

53. Consistent with their marketing and their agreements, Respondents regularly discuss in their internal communications the finite terms of merchant cash advances. For example, Braun emailed to Giardina and Gregg on March 6, 2018 a cash advance agreement between Richmond and the merchant A & R Vila Carriers, Inc. and described its finite term as follows: “\$10K @ 19,900 – 1,999 DAILY (YES THAT IS 10 PAYMENTS).” Ex. 101 at RCLG000051250; *see also*, *e.g.*, Ex. 193 at 1-2 (text message from Reich suggesting term of “60 days” for advance to NAMR 2617, LLC and responses from Braun stating, “[T]he terms gotta be 75 days,” and, “If it’s 75 days I’ll make it work”). Finite repayment terms are also discussed by external brokers who contact Respondents to solicit their interest in issuing new cash advances. *E.g.*, Ex. 187 at RCLG000148349 (email from broker to Reich stating, “We have a 20k at a 1.499 for 60 days, wanna match?”).⁹

54. The length of the term selected by Respondents reflects the perceived risk in issuing the advance. Braun testified that Respondents might choose a short repayment period because of such factors as a history of defaults by the merchant or a poor payment history. Ex. 38 (Braun Tr.) at 60:3-10, 61:14-21.

⁹ *See also* Ex. 129 at RCLG000156630 (email from broker to Giardina asking, “Merchant has an offer for 50k at a 1.45 over 125 days can you compete?”) Ex. 102 at RCLG000052429 (email from broker to Giardina stating that a competing merchant cash advance provider had provided an advance with a term of “70 days”); Ex. 142 at RCLG000060933 (email from broker to Giardina stating, “We need to beat 17k over 75 days!”); Ex. 118 at RCLG000082195 (email from broker to Braun asking, “What is the term for the Viceroy agreement?”); Ex. 103 at RCLG000008050 (email from broker to Giardina asking, “[C]an we get 70 days?”).

55. Braun explained to Reich his philosophy in setting the term for a merchant cash advance during a conversation by text message in March 2017. Ex. 138 at 2-5. Braun told Reich that he prefers to keep terms short, preferably fewer than 100 days, in order to minimize risk, even at the expense of reducing the advance to a smaller amount. *Id.* at 1-8. Braun wrote, “It’s not the funding amount to me[.] It’s term,” *id.* at 2, and “Id rather wait and get in 60 days[.] Or 70-75 days[.]” *Id.* at 4. “I have fear lately that the longer your there the longer your money at risk.” *Id.* at 5. “You know I love funding and want in this deal, but it’s just nt [sic] for me if I can’t be at a semi reasonable term that im comfortable [sic] with.” *Id.* at 8. Reich later responded, “I’m gonna cut it to 90 days or won’t fund,” *id.* at 12, and “I’m ok with 250k but the more I think about the term” *Id.* at 25.

56. Merchants understand that Respondents’ agreements indicate finite repayment terms. For example, Key Medical Supply, Inc. signed an agreement with Viceroy providing for a \$74,950 repayment amount and a daily payment of \$1,499, indicating a 50-day term. Ex. 173 at RCLG000064034. The merchant hand-edited the agreement accordingly, making clear the term was “50 DAYS,” as shown here:

50 DAYS

Total Purchase Price: \$50,000.00 Specified Percentage: ~~40~~ % Specific DAILY Amount: \$ 1,499.00 Total Purchased Amount: \$ 74,950.00

Id. See also Ex. 205 at RCLG000105646 (agreement hand-edited to read “40 Payment’s”; agreement provided for repayment amount of \$14,990 and daily amount of \$375, indicating 40-day term); *id.* at RCLG0000105653 (same).

57. The chart below shows instances when Respondents and the brokers they work with have described their cash advances as being subject to finite terms.

Respondents' Communications Concerning Finite Terms of Their Merchant Cash Advances

Merchant	Advance Issued by	Exhibit for Agreement	Advance Amount	Daily Payment Amount	Repayment Amount	Term Indicated (Business Days)	Respondents' Communications Concerning Term Length
A & R Vila Carriers	Richmond	Ex. 101 at RCLG000051252	\$ 10,000	\$ 1,999	\$ 19,900	10.0	Braun wrote in an email to Giardina and Gregg, "\$10K @ 19,900 – 1,999 DAILY (YES THAT IS 10 PAYMENTS)." Ex. 101 at RCLG000051250.
Anthec	Richmond	Ex. 111 at RCLG000070907	\$ 10,000	\$ 999	\$ 19,990	20.0	Braun wrote in an email to Giardina, Gregg, and Stacie Motyl, Respondents' underwriter, infra ¶ 61, that Richmond's cash advance to Anthec was for "20 DAYS." Ex. 111 at RCLG000070901.
Arwa	Richmond	Ex. 114 at RCLG000089343	\$ 30,000	\$ 899	\$ 44,970	50.0	Stacie Motyl, Respondents' underwriter, wrote in an email to Braun, "Since the contract is only 50 days and we can collect from the bank... I'd say fund it." Ex. 113 at RCLG0000153271.
Environmental Packaging Techs.	Richmond	Ex. 137 at RCLG000072954	\$ 200,000	\$ 2,860	\$ 286,000	100.0	Braun observed in a text message to Reich that the term would be "100 days," and he and Reich later agreed to issue the advance at that term. Ex. 138 at 2, 31-32.
Friends Wholesale	Viceroy	Ex. 147 RCLG000108043	\$ 100,000	\$ 4,999	\$ 149,900	30.0	Reich wrote, "NOT SURE IF WE SHOULD STILL FUND THIS ONE BUT JOHN HERE IT IS AT YOUR TERMS 30 DAYS FULL FEES," in an email to Braun and Giardina, et al. Ex. 147 at RCLG000010842.
Galaxy United Servs.	Richmond	Ex. 152 at RCLG000026744	\$ 5,000	\$ 136	\$ 7,495	55.1	Giardina wrote "5k @ 1.499 55 136" in an email to a broker, indicating a \$5,000 advance, \$136 daily payment amounts, and a 55-day term. Ex. 152 at RCLG000026742.
Gary D. Koen, d/b/a Eagle Painting Co.	Richmond	Ex. 153 at RCLG000065380	\$ 10,000	\$ 199	\$ 14,990	75.3	Giardina wrote, "10K @ 14990 75 DAYS 199 DAILY," in an email to Christopher Kim, a colleague. Ex. 153 at RCLG000065377. In planning the advance, Braun had previously emailed Giardina, et al., "[i]ts 10k deal we generally do shorter terms on these deals cause theres no money in them on the long term - do 199 daily at best 75 days just to get a deal done." Ex. 154 at RCLG000155326.
Glass and Metal Concepts	Richmond	Ex. 156 at RCLG000024517	\$ 15,000	\$ 299	\$ 22,485	75.2	Giardina initially indicated in an email a term of 70 days. See Ex. 155 at RCLG0000154990 ("15k @ 1.499 321daily [sic]," where "1.499" is a factor indicating a repayment amount of \$22,485). Giardina then lowered the daily payment amount from \$321 to \$299 in order to "extend the term 5-10 days." <i>Id.</i> at RCLG000154989. The agreement at left indicates a 75-day term, which is 5 days longer than the 70-day term Giardina initially indicated. <i>Id.</i> at RCLG0000154990.
Global Business	Richmond	Ex. 157 at RCLG000025367	\$ 15,000	\$ 699	\$ 22,485	32.2	Motyl wrote "Contract only about 30 days, let's fund," in an email to Braun, Giardina, and Reich, et al. Ex. 158 at RCLG000153408.
J.B. Plumbing	Richmond	Ex. 63 (Bush Aff. Ex. B)	\$ 60,000	\$ 999	\$ 89,940	90.0	A broker working with Richmond sent J.B. Plumbing an email offering a cash advance of "\$60,000 paying back \$89,940 over 4.5 months @\$999/day." Ex. 62 (Bush Aff. Ex. A). A 4.5-month period contains roughly 94 business days. See Song Aff. ¶ 11 (observing that the median year contains 251 business days).
JZRM Corp.	Richmond	Ex. 171 at RCLG000070792	\$ 20,000	\$ 599	\$ 29,980	50.1	Motyl wrote, "[O]ur contract is 50 days, so give it a shot," in an email to Braun and Giardina, et al. Ex. 172 at RCLG000154754
James Don Jackson, Jr. M.D., PA	Richmond	Ex. 166 at RCLG000064886	\$ 4,000	\$ 199	\$ 5,996	30.1	Motyl wrote, "Out contract is small and only 30 days," in an email to Braun and Giardina, et al. Ex. 167 at RCLG000059083.
Laredo Pain Consultants	Richmond	Ex. 178 at RCLG000069591	\$ 20,000	\$ 999	\$ 29,980	30.0	Motyl wrote, "[O]ur contract is only 30 days - do you want to wait until bank is positive?" in an email to Braun and Giardina, et al. Ex. 179 at RCLG000154547.
Le Nettroyeur Group	Richmond	Ex. 182 at RCLG000064149	\$ 7,000	\$ 175	\$ 10,498	60.0	Motyl wrote, "7k 60 174.88," indicating an advance of \$7,000, to be repaid over a 60-day term at daily payments of \$174.88, in an email to Giardina and Braun. Ex. 181 at RCLG00015568.

Merchant	Advance Issued by	Exhibit for Agreement	Advance Amount	Daily Payment Amount	Repayment Amount	Term Indicated (Business Days)	Respondents' Communications Concerning Term Length
Old Post Road Saloon	Richmond	Ex. 198 at RCLG000025503	\$ 8,000	\$ 299	\$ 11,992	40.1	Motyl wrote, "[C]ontract is only 40 days, so go ahead and fund," in an email to Braun, Reich, and Giardina, et al. Ex. 199 at RCLG000025497.
Orion Megivern	Richmond	Ex. 202 at 1	\$ 10,000	\$ 299	\$ 14,500	48.5	A broker working with Richmond wrote, "10k offer pays back 14,990\$ [sic] and it goes over 50 payments witch [sic] is 2 and a half months and each payments is 299\$ [sic] a payment." Ex. 201 (Affidavit of Orion Megivern, previously filed in <i>Richmond Capital Group LLC v. Orion Megivern</i> , No. 151406/2018 (Sup. Ct. Richmond Cnty.) ("Megivern Aff.") ¶ 8.
Parc Mechanical	Richmond	Ex. 208 at RCLG000041335	\$ 15,000	\$ 499	\$ 22,485	45.1	Motyl wrote, "[C]ontract is 45 days, go for it," in an email to Braun, Reich, and Giardina, et al. Ex. 209 at RCLG000156975.
Precision Plant Servs.	Ram	Ex. 218 at RCLG000086674	\$ 40,000	\$ 999	\$ 59,960	60.0	Reich wrote, "Revised to 40k and 60 days," in an email to Braun and Giardina, et al. Ex. 218 at RCLG000086673.
Pro-Seal USA	Richmond	Ex. 222 at RCLG000114762	\$ 10,000	\$ 999	\$ 14,990	15.0	Braun called the Pro-Seal advance a "15 day deal" in an email to Giardina, et al. Ex. 222 at RCLG0000114759.
RJT Food and Restaurant	Richmond	Ex. 279 at RCLG000067011	\$ 20,000	\$ 599	\$ 29,980	50.1	Motyl wrote, "[O]ur contract is only 50 days... give it a shot," in an email to Braun and Giardina, et al. Ex. 278 at RCLG000155063.
The Rent 2 Own Guys	Richmond	Ex. 280 at RCLG000068919	\$ 55,000	\$ 2,099	\$ 82,445	39.3	Richmond representative Ezra Mosseri described the term as "40 DAYS" in an email to Gregg, Giardina, and Braun. Ex. 281 at RCLG000154599.
Riggs Mgmt.	Richmond	Ex. 227 at RCLG000026777	\$ 8,000	\$ 399	\$ 11,992	30.1	Motyl wrote, "[O]ur contract is only 30 days... give it a shot," in an email to Braun and Giardina, et al. Ex. 228 at RCLG000154733.
Salon Profl Servs.	Richmond	Ex. 234 at RCLG000072633	\$ 125,000	\$ 6,299	\$ 187,375	29.7	Motyl wrote, "125k for 30 days? You are ridiculous JB," in an email to Braun and Giardina, et al. Ex. 235 at RCLG00154240.
Shelter from the Storm Roofing	Richmond	Ex. 240 at RCLG000024923	\$ 20,000	\$ 599	\$ 29,980	50.1	Motyl wrote, "[O]ur contract is only 50 days. . . lets fund," in an email to Braun and Giardina, et al. Ex. 241 at RCLG000044859.
Slater Farms	Richmond	Ex. 243 at RCLG26913	\$ 20,000	\$ 999	\$ 29,980	30.0	Motyl wrote, "I don't like this one, even if it's only 30 days," in an email to Braun and Giardina, et al. Ex. 244 at RCLG0000154324.
Southern Comfort HVAC	Richmond	Ex. 245 at RCLG0000700423	\$ 20,000	\$ 599	\$ 29,980	50.1	Braun wrote, "[I] dont love this bank id shorten a bit - like 50 days," in an email to Giardina and Motyl, prior to the drafting of the agreement at left. Ex. 246 at RCLG000154574. Giardina subsequently emailed the relevant broker, "20k 50 599," indicating a \$20,000 advance, a 50-day term - as Braun advised - and a \$599 daily payment. Ex. 247 at RCLG0000154496. Giardina then sent the broker a draft agreement including the terms at left. Ex. 245.
TNG Contractors	Richmond	Ex. 256 at RCLG000025525	\$ 50,000	\$ 1,875	\$ 74,950	40.0	Motyl wrote, "[L]ooks okay I guess... hate 40 day deals for large contracts though," in an email to Braun and Giardina, et al. Ex. 257 at RCLG000154323.
USA Prime Business	Ram	Ex. 263 at RCLG000093219	\$ 15,000	\$ 749	\$ 22,485	30.0	Motyl emailed Reich, Braun, and Giardina stating, "[O]ur contract is only 30 days... let's fund." Ex. 263 at
United RL Capital Servs.	Viceroy	Ex. 260 at RCLG000005047	\$ 100,000	\$ 4,999	\$ 149,900	30.0	Braun sent Reich a text message stating, "[H]e said he wants to revise the term on united rl," and "Lol it's 30 days." Ex. 261 at 1-2.
Wyldeewood Cellars	Ram	Ex. 73 (Hickel Aff. Ex. A)	\$ 10,000	\$ 999	\$ 59,600	59.7	Reich told Wyldeewood owner John Brewer that its advance would be "paid off in 60 daily payments of \$999." Ex. 57 (Brewer Aff.) ¶ 8. See also Ex. 72 (Hickel Aff.) ¶ 6 (a broker working with Ram also told Brewer's colleague that Ram's advance would be repaid in "60 daily payments").

58. Additional instances in which Respondents have discussed finite terms are set forth in the footnote below.¹⁰

3. Respondents Underwrite Their Merchant Cash Advances by Analyzing Merchants' Bank Balances and Credit but Not Their Receivables

59. Respondents underwrite their merchant cash advances as if they are loans.

60. Before issuing an advance, Respondents generally request no documents concerning merchants' receivables – the assets that they are supposedly

¹⁰ Ex. 124 at RCLG0000114371 (email from Braun Respondents' underwriter, Stacie Motyl, and Giardina discussing a new advance and stating, "[S]tacy i shortened the deal"); Ex. 126 at 2 (text message from Braun asking, "How much was Ur term on 35?" and response from Reich stating, "60 days"); Ex. 128 at 3-4 (text from Miriam Deutsch stating that a merchant would take an additional advance "if you stretch the term" and response from Reich stating, "fuk that"); Ex. 136 at RCLGR000157119 (email from Motyl asking Braun and Giardina why a term was being "shorten[ed]" and retort from Braun asking, "[W]hy would I not shorten any deal"); Ex. 146 at 1-2 (text from Deutsch stating, "[T]ell him to do 125k same rate/same term," and response from Reich stating, "125k 65 days"); Ex. 159 at RCLG000153585 (email to Braun from Richmond representative Jerry Farkas discussing a cash advance with a term of "60 days"); Ex. 180 at RCLG0000009928 (email from Giardina to Braun and Motyl asking, "Can we do 17.5k over 100 days?"); Ex. 195 at RCLG000087964-966 (email from Braun suggesting term of "95 days" and response from Stacie Motyl, Respondents' underwriter, stating, "If you're going to make him shorten then need to lower contract amount"); Ex. 220 at 4-7 (text from Reich stating, "Tell [merchant] if it isn't 40 days there are fees," and response from Braun stating, "I am happy we got in 150@40 days," and "I think we'd survive 150@75 days"); Ex. 238 at 2, 12-13 (text from merchant to Reich asking for "a longer term" and subsequent text from Reich offering "a great deal" with a "[l]onger payment schedule"); Ex. 262 at 2 (text from Reich asking Deutsch, "[W]ho the fuck takes 1m 1.499 80 days"); Ex. 165 at RCLG000097196 (email to Braun from Richmond representative Mike Patel discussing a new advance and suggesting they "keep the term short"); Ex. 272 at RCLG000054539 (email to Braun from Deutsch, posing as "Mimi Parker," *see supra* ¶ 41 n.3, discussing a new advance and asking, "10k same term?"); Ex. 277 at 1 (text from Deutsch asking, "[N]elson – all the deals u did were same rate/term?" and response from Reich stating, "120 days).

purchasing – but instead ask for little more than recent statements from merchants’ bank accounts. *E.g.*, Ex. 48 (Auboine Aff.) ¶ 5 (broker working with Richmond requested no information concerning merchant’s receivables and no documents concerning its business, such as a business plan or accounting records); Ex. 75 (Kadri Aff.) ¶ 5 (Braun and another Richmond representative requested only bank statements and no additional documents concerning the merchant’s business).

61. Respondents pay little attention to merchants’ receivables during their discussions with their underwriter, Stacie Motyl, concerning whether advances should be issued and on what terms. In these discussions, Motyl generally does not evaluate merchants’ receivables but instead considers only such factors as their bank balances and the personal credit of merchants’ principals. *E.g.* Ex. 263 at RCLG000093210 (email from Motyl discussing bank balance and personal credit, or “PC,” as to USA Prime Business, LLC); Ex. 38 (Braun Tr.) at 55:16-56:7 (stating that Motyl’s discussion of USA Prime Business was typical of her communications); *id.* at 31:4-5, 55:13-15 (stating that Motyl identified herself as “Stone Funding” in her emails). Based on such factors, Motyl then recommends to her colleagues that Respondents proceed with a cash advance, abort it, or modify its terms. *E.g.*, Ex. 144 at RCLG00023130 (email from Motyl discussing advance to Foster Healthcare Corp. stating, “Not loving that credit report – any chance of reducing to 12k?”).

62. Respondents generally do not discuss with Motyl during their underwriting discussions such factors as (1) pending, unpaid receivables, (2) past payments of receivables made by merchants’ customers, (3) merchants’ practices of

collecting on receivables, or (4) the possibility that merchants' receivables might fluctuate in the future. *See id.*; *see also* Ex. 38 (Braun Tr.) at 55:18-56:24, 57:7-12.

4. Respondents Charge Merchants' Accounts Only by Fixed Daily Amounts that They Do Not Reconcile Based on Merchants' Receivables

63. Despite language in their agreements stating that Respondents will reconcile and recalculate merchants' payment amounts based on a "Specified Percentage" of their revenues, *infra* ¶¶ 113-14, Respondents debit merchants' bank accounts each day by fixed daily amounts, resulting in the finite repayment terms indicated in their agreements. Respondents' debiting of daily payments at fixed amounts that are not reconciled indicates that their merchant cash advances are not purchases of receivables but instead are loans. *See* Petitioners' Memorandum of Law in Support of the Verified Petition at 22-24.

64. For example, shortly after Ram entered a Merchant Agreement with Bionicle Plumber on April 24, 2017, Ex. 86 (Pennington Aff. Ex. A), Ram began debiting Bionicle Plumber's bank account each day in the amount of \$349, which is the "Specific DAILY Amount" stated in Ram's Merchant Agreement. This is shown by a history of daily debits taken from merchants' bank accounts ("Daily Debit History") prepared by Respondents' payment processor, Actum Processing, LLC, which is attached in excerpted form as Exhibit 24.¹¹ Ex. 24 at 9.

¹¹ The chart at Exhibit 24 is an excerpt of a spreadsheet created by Actum Processing, which administers Respondents' daily ACH debits from merchants' bank accounts. *See, e.g.*, Ex. 27 at (Apr. 6, 2017 email from Actum Processing vice president to Giardina thanking him for "allowing Actum to meet Richmond's ACH processing needs").

65. Ram increased its daily debits from Bionicle's account to \$597 in July 2017, \$686 in October 2017, and \$799 in January 2018. Ex. 85 (Pennington Aff.) ¶ 26. These changes were the result not of any reconciliation by Respondents but instead of new fixed daily amounts stated in agreements between Ram and Bionicle, as testified by Michael Pennington, Bionicle's owner:

The payments Ram debited each day remained at these Specific Daily Amounts and changed only when Bionicle entered a new Merchant Agreement. I understood from my calls with Erica [a broker] and Mr. Reich that the daily payment amounts were set in stone and not subject to any adjustment. I am aware of no point at which Ram recalculated Bionicle's payment amounts, reconciled its account, or issued a credit based on a Specified Percentage of its receivables.

Id. ¶ 27.¹²

66. Respondents have admitted in hundreds of affidavits filed in New York State Supreme Court that they debit merchants' bank accounts based only on fixed daily amounts. They repeatedly testify that they debit the accounts by "automatic debits," *e.g.*, Ex. 77 (Kadri Aff. Ex. B) at 3 ¶ 11, indicating that they simply set merchants' payments to repeat at fixed amounts and do not recalculate them based on merchants' receivables. *See also, e.g.*, Ex. 54 (Auboine Aff. Ex. F) at 4 ¶ 11; Ex.

¹² *See also* Ex. 48 (Auboine Aff.) ¶ 12 (testifying that Richmond debited JMA Chocolates' bank account only by the daily amounts stated in Richmond's agreements, and "[t]he amounts of Richmond's debits did not change from payment to payment except when JMA Chocolates entered into a new agreement with Richmond"); Ex. 75 (Kadri Aff.) ¶ 14 (testifying concerning Respondents' charging of fixed daily payments); Ex. 95 (Savastino Aff.) ¶ 12 (same); Ex. 45 (Affidavit of Said Aboumerhi ("Aboumerhi Aff.)) ¶ 10 (same); Ex. 91 (Price Aff.) ¶¶ 25-26 (same); Ex. 98 (Theriault Aff.) ¶ 21 (same); Ex. 140 (Affirmation of Chaim Freund, previously filed in the proceeding *FCI Enterprises, Inc. v. Richmond Capital Group, LLC*, No. 520934/2018 (Sup. Ct. Kings Cnty.)) Ex. 140 ¶¶ 10, 19 (same).

90 (Pennington Aff. Ex. E) at 3 ¶ 11; Ex. 60 (Brewer Aff. Ex. C) at 3 ¶ 11; Ex. 71 (Gianni Aff. Ex. B) at 3 ¶ 11.

67. Braun has admitted in sworn testimony in an investigative hearing conducted by the NYAG that Respondents have no practice of reconciling or recalculating payment amounts:

Q. Are you aware of any practice that Richmond, RAM, or Viceroy had, actually had, of crediting money back to merchants' accounts based on reconciliation?

A. No, I don't believe that I'm aware of any of them.

...

Q. Are you aware of any practice that Richmond, RAM, or Viceroy actually had of calculating merchants' payment amounts based on the deposit activities in their bank accounts?

A. Originally prior to proceeding with the deal, yes, because that's part of the whole underwriting and cash flow analysis and revenue analysis and everything like that. Yeah, they did that.

Did they do it moving forward? Like I said before, they don't do it for various reasons. . . .

...

So to my knowledge the answer is no.

Ex. 38 (Braun Tr.) at 151:8-152:18; *see also id.* at 148:12-18 (Braun testifying that he knew of no instance in which Richmond, Ram, or Viceroy logged into merchants' bank accounts in order to calculate what their daily payments should be); *id.* at 150:5-11 (Braun testifying that he knew of no instance in which Richmond, Ram, or Viceroy credited money to a merchant's account based on reconciliation).

68. Respondents do not reconcile merchants' payment amounts even when merchants ask for payment reconciliation or adjustment. Merchants frequently

request such adjustments, Ex. 38 (Braun Tr.) at 158:10-21, and in these instances Respondents refuse merchants' entreaties and continue to debit their bank accounts by fixed daily amounts, *see id.* at 160:13-21 (Braun recalled no instance in which he granted merchants' requests to reconcile or recalculate their payment amounts), as shown the following examples:

- Texas Tactical Gear & Firearms, Inc. ("Texas Tactical"), located in Katy, Texas, experienced a 50% drop in revenues when it reduced its marketing presence at gun shows. Ex. 45 ("Aboumerhi Aff.") ¶ 12. In response, its owner, Said Aboumerhi, called Richmond and requested that its daily payment amounts be adjusted. *Id.* ¶¶ 13-14. The merchant subsequently received a number of phone calls from Braun. *Id.* ¶¶ 14, 16. Aboumerhi explained Texas Tactical's revenue situation to Braun and asked for "a 'reconciliation' and an 'adjustment'" of its payments, but Braun refused and instead insulted, swore at, and threatened him. *Id.* ¶¶ 17-19.
- Jean-Marie Auboine, principal of JMA Chocolates, asked a broker working with Richmond for an adjustment of its daily payment amount due to a seasonal slowdown in the chocolate business. Ex. 48 (Auboine Aff.) ¶ 15. The broker said she would relay Auboine's request to Richmond, and Auboine was subsequently contacted by Braun. *Id.* ¶¶ 16-18. Auboine explained to Braun that JMA's revenues had dropped and that it could not afford its daily payment amount. *Id.* ¶ 19. Instead of reconciling JMA's payments, Braun told Auboine that JMA "had signed a contract to make a daily payment and that [they] could not get out of it." *Id.* ¶ 20.
- Jerry Bush explained to Braun that he was waiting on his clients to pay their invoices and feared the company would be unable to make its \$999 daily payments if they were not adjusted for about a one-week period. Ex. 61 (Bush Aff.) ¶ 15. Braun refused, saying, "I don't care about your problems," and "I'll default you before you can get out of the bathroom." *Id.* ¶ 16.
- Michael Kramer, owner of Triad Well Service, LLC ("Triad"), located in Brookshire, Texas, asked Richmond to adjust Triad's payment amounts, explaining that their customers were not paying their invoices and that the receivables outlook was worsened by Hurricane Harvey, a category 4 hurricane approaching the Houston area. Ex. 79 (Kramer Aff.) ¶¶ 25-26. Richmond did not agree reduce Triad's payments, and Kramer later explained Triad's situation to Braun. *Id.*

¶¶ 27-28. Braun did not respond to Kramer’s concerns but “instead . . . insulted, swore at, and threatened” him. *Id.* ¶ 28.

- S&R Architectural Metals, Inc., located in Anaheim, California, informed Richmond that it could not make its payments until its customers began paying their invoices. *See* Ex. 231 at RCLG00088606. Richmond did not reconcile the merchant’s payments but instead declared the merchant to be in default, *id.*, and obtained a court judgment against the merchant later that day. *See generally* Ex. 230.¹³

5. Respondents Draft Their Agreements to Assert Extensive Claims to Merchants’ and Guarantors’ Assets that Are Secured in the Event of Bankruptcy

69. Respondents draft their agreements to provide them with extensive claim to merchants’ and guarantors’ assets. Their agreements provide that these claims are secured in the event of bankruptcy and establish that even a filing for bankruptcy, or an interruption or termination of a merchant’s business, constitutes default. Under New York law, such contract provisions indicate that a merchant cash advance is not a purchase of receivables but is in fact a loan. *See* Petitioners’ Mem. of Law in Support of the Verified Petition at 26-27.

¹³ *See also* Ex. 75 (Kadri Aff.) ¶¶ 15-19 (when Nabih Kadri told Braun that Smart Courier’s revenues would drop in the coming months due to a seasonal decrease in shipping activity, Braun did not recalculate or reconcile the merchant’s payments but instead offered an additional cash advance with higher daily payments); Ex. 85 (Pennington Aff.) ¶¶ 29-34 (testifying that Bionicle Plumber asked a broker for a grace period because the business was entering a period in which no money was coming in from its customers and that instead Ram continued debiting the merchant’s account by the fixed daily amount); Ex. 212 (Affidavit of Michel Poignant, filed in *Paytoo Corp. v. Richmond Capital Group, LLC*, No. 654645/2017 (Sup. Ct. N.Y. Cnty)) ¶ 3 (merchant Paytoo Corp. notified Richmond that it had experienced a business slowdown, but Richmond responded that it and other merchant cash providers “would not stop or adjust anything”); Ex. 132 (Affirmation of Avraham Lesches, filed in *Richmond Capital Group LLC v. Congregation Shule, Inc.*, No. 2018-51838 (Sup. Ct. Dutchess Cnty.) (“Lesches Aff.”)) ¶¶ 26-34 (Gregg and Braun refused requests from merchant Congregation Shule, Inc. for a reduced payment amount when merchant was experiencing a slowdown in receivables).

70. First, Respondents' agreements state that Respondents have purchased not only merchants' receivables but instead practically any money or rights held by merchants. Their agreements state:

Merchant . . . hereby sells, assigns and transfers to RCF [Ram] . . . in consideration of the funds provided . . . all of Merchant's future accounts, contract rights and other entitlements arising from or relating to the payment of monies from Merchant's customers and/or third party payors . . . until the amount specified below (the "Purchased Amount") has been delivered by or on behalf of Merchant to RCF.

E.g., Ex. 1 at RCLG000098909; *see also, e.g.*, Ex. 183 at RCLG000104543 § 1.11 (clause stating that merchants assign to Respondents the leases for their business premises, which Respondents may exercise without prior notice "[u]pon breach of any provision in this Agreement").

71. Second, Respondents require their agreements to be guaranteed. Each individual guarantor – usually a merchant's owner – provides a "Personal Guaranty" of the merchant's "good faith, truthfulness and performance" as to certain obligations under the Merchant Agreement, *e.g.*, Ex. 1 at RCLG000098914, and the Merchant Agreement states that Respondents may, upon the instance of certain defaults, "enforce the provisions of the Personal Guarantee of Performance against the Guarantor(s)," *id.* at RCLG000098911 § 1.10 ("Protection 2").

72. Third, Respondents' agreements purport to provide them with security interests pursuant to the Uniform Commercial Code that they can enforce in the event of bankruptcy. Their agreements state:

Security Interest. This Agreement will constitute a security agreement under the Uniform Commercial Code. Merchant grants to RCF a security interest in and lien upon: (a) all accounts, chattel paper, documents, equipment, general intangibles, instruments, and inventory, as those terms are defined in Article 9 of the Uniform

Commercial Code (the “UCC”), now or hereafter owned or acquired by Merchant, (b) all proceeds, as that term is defined in Article 9 of the UCC (c) all funds at any time in the Merchant’s Account, regardless of the source of such funds, (d) present and future Electronic Check Transactions, and (e) any amount which may be due to RCF under this Agreement

E.g., Ex. 1 at RCLG000098914. The agreements emphasize that this security interest gives Respondents priority status in the event of a bankruptcy proceeding, stating that Respondents are “not required to file a motion for relief from a bankruptcy action automatic stay to realize on any or the Secured Assets.” *Id.*

73. Fourth, in addition to stating that their interests are secured in the event of bankruptcy, respondents’ agreements until late 2017 and early 2018 expressly stated that even the filing of a bankruptcy proceeding constitutes default. *E.g.*, Ex. 183 at RCLG000104543 § 3.1(a) (“Events of Default”). *See also id.* § 2.9 (“No Bankruptcy” clause, stating that in the event of a bankruptcy filing Respondents could file merchants’ confessions of judgment (“Protection 3”) and pursue legal actions against merchants and their guarantors (“Protection 2”).

74. Although Respondents appear to have removed some of these clauses expressly referring to bankruptcy from their agreements by early 2018, their contracts effectively continue to make bankruptcy grounds for default. They do this by including clauses stating that it is an act of default for a merchant to “interrupt, suspend, dissolve, or terminate” its business (hereafter “Interruption/Termination Clauses”). *E.g.*, Ex. 92 (Price Aff. Ex. A) at RCLG000043872 § 3.1(d). Because bankruptcy typically involves at least some business interruption, if not termination, particularly in the small business context, any bankruptcy having such

an effect would effectively constitute default under the terms of the Interruption/Termination Clauses. *See id.*

6. Respondents Charge Merchants Annual Interest Rates in the Triple and Even Quadruple Digits

75. Respondents regularly charge merchants annual interest in the triple and even quadruple digits. This is shown in the affidavit of Chansoo Song, Data Scientist for the Office of the Attorney General. As Mr. Song explains, the interest rates charged by Respondents can be calculated based on (1) the “Total Purchase Price,” or amount of the cash advance; (2) the Specific Daily Amount; and (3) the “Total Purchased Amount,” or repayment amount. Ex. 43 (Affidavit of Chansoo Song (“Song Aff.”)) ¶¶ 17-24.

76. For example, Richmond issued a cash advance to the merchant James P. Mesko, doing business as J.P. Mesko Contracting Services (“J.P. Mesko”), of Troy, New York, in the amount of \$20,000, minus fees. Ex. 170 at RCLG000052215. The advance was to be repaid in the amount of \$29,980 through daily payments of \$599, resulting in a 50-day term ($\$29,980 \div \$599 = 50.05$). Ex. 43 (Song Aff.) ¶ 21. The principal was \$20,000, and the amount of interest, not including fees, was \$9,980 ($\$29,980 - \$20,000 = \$9,980$). *Id.* ¶ 20. This interest amount, paid over a term of 50 days, yields an annual interest rate of 250%. *Id.* ¶¶ 21-24.

77. The annual interest rates on Respondents’ merchant cash advances, not including their fees, range as high as 2,496%, as shown in the chart attached as Exhibit 283.

78. If Respondents’ fees are also treated as interest, the principal is less, and the interest amount and interest rate are higher. For example, Richmond

deducted \$3,998 in fees from J.P. Mesko's \$20,000 advance, causing the principal to reduce from \$20,000 to \$16,002. Ex. 170 at RCLG000052215, RCLG000052223; Ex. 43 (Song Aff.) ¶¶ 26-27. If these fees are interest, J.P. Mesko's interest amount rises from \$9,980 to \$13,978, and its annual interest rate over a 50-day term rises from 250% to 438%. Ex. 43 (Song Aff.) ¶¶ 27, 30-31.

79. When Respondents' fees are treated as interest, the annual interest rates on their cash advances ranges as high as 3,910%, as shown in the chart attached as Exhibit 283.

B. Respondents Engage in Widespread Misrepresentations in the Marketing and Servicing of their Cash Advances

80. Respondents rely heavily on misrepresentation in marketing and servicing their cash advances.

1. Respondents Misrepresent that Their Cash Advances Require "No Personal Guarantee or Collateral"

81. Respondents misrepresent the secured nature of their agreements. In its website, Richmond falsely advertises, "No Credit or Collateral Requirements," and states, "[W]e need no personal guarantee of collateral from business owners seeking our merchant cash advances." Ex. 20 at 2 (Richmond Capital Group, "How Does It Work," <http://www.richmondcapitalgroup.com/works.html> (last visited June 6, 2020)); *id.* at 3 (Richmond Capital Group, "A few words about what we do," <http://www.richmondcapitalgroup.com/about.html> (last visited June 6, 2020)).

82. In fact Respondents require their cash advances to be both secured by collateral and guaranteed. *Supra* ¶¶ 69-72. Respondents' agreements include a "Security Agreement" that states that they hold a "security interest in and lien

upon” a wide array of collateral, including all of a merchants’ “accounts,” “equipment,” “inventory,” and “all proceeds.” *E.g.*, Ex. 1 at RCLG000098914. And despite their promise of “no personal guarantee,” Respondents expressly require a “Personal Guaranty,” as discussed above. *Supra* ¶ 71.¹⁴

2. Respondents Misrepresent and/or Conceal the Fees They Deduct from Their Cash Advances

83. Respondents misrepresent to merchants the existence, the amounts, and the nature of the fees they charge each merchant as a condition of receiving a cash advance. The result is that Respondents repeatedly charge fees far above the amounts indicated and provide merchants with less cash than represented.

84. Richmond falsely advertises that its merchant cash advances have “No Upfront Costs.” Ex. 20 at 3. In fact, Respondents deduct two “Upfront Costs” from merchant cash advances: an “Origination Fee” and an “ACH Program Fee.” These fees are set out in a document called “Appendix A: The Fee Structure” (“Fees Appendix”). *E.g.*, Ex. 117 at RCLG000096873.

85. The amounts of Respondents’ fees vary widely. For example, on an advance of \$200,000, Viceroy’s agreement with Head to Toe Therapy, Inc. provided for an Origination Fee and an ACH Program Fee totaling \$9,998, or 5% of the cash advance. Ex. 163 at RCLG000043816. In another agreement with Benchmark

¹⁴ Also false are Richmond’s claims that it has “No Credit . . . Requirements” and that “Bad Credit [Is] Okay.” Ex. 20 at 3. In fact, Respondents review merchants’ credit and reject applications from merchants with undesirable credit histories. *E.g.*, Ex. 167 at RCLG000059083 (underwriting email stating, “Our contract is small and only 30 days, but that credit history is horrible ... so I say decline.”).

Builders, Inc. for the same advance amount, \$200,000, Ram’s agreement stated fees totaling \$39,998, or 20% of the advance. Ex. 117 at RCLG00096873.

a. Respondents Use a Percentage-Based Fees Clause to Conceal Their Actual Fee Amounts

86. In addition to the fees they state in their agreements in express amounts, Respondents also include a clause stating that they may instead charge an ACH Program Fee based on a percentage – either 10% or 12% “of the funded amount, depending on size of advance,” *e.g.*, Ex. 99 (Theriat Aff. Ex. A) at RCLG000079117; Ex. 117 at RCLG00096873. For example, the language in Ram’s Fees Appendix with MRM Consulting states as follows:

Origination Fee - \$1999.00 to cover Underwriting and related expenses.

ACH Program Fee - \$999.00 (or 10 % of the funded amount, depending on size of advance) ACH’s are labor intensive and are not an automated process, requiring us to charge this fee to cover costs.

Ex. 99 (Theriat Aff. Ex. A) at RCLG000079117.

87. Respondents use this percentage clause to mislead and conceal from merchants the total fees charged. By setting out express ACH Program Fees, Respondents indicate that these are the actual amounts that they will charge. This is supported by the fact that Respondents do not state whether an ACH Program Fee will be percentage-based or set to an express amount or how such a determination will be made, making it impossible for merchants to determine how much in fees Respondents will actually charge. *See id.*; *see also* Ex. 38 (Braun Tr.) at 95:4-9 (answering, when asked how a merchant would know from Respondents’ agreement “exactly how much in fees was going to be deducted,” “He wouldn’t.”)

88. In the case of MRM Consulting, Ram did not deduct from its \$25,000 cash advance Ram the \$2,998 in fees expressly stated in its agreement (a \$1,999 Origination Fee and a \$999 ACH Program Fee), which would have resulted in the merchant receiving a net cash advance of \$22,002. Ex. 98 (Theriault Aff.) ¶ 9. Instead Ram deducted \$4,498, equaling the \$1,999 fixed Origination Fee plus a \$2,499 ACH Program Fee of, or 10% of Ram’s \$25,000 advance ($\$2,499 = \$25,000 \times 10\%$). Ex. 98 (Theriault Aff.) ¶ 18; Ex. 192 at RCLG000079109. This left MRM with only \$20,502, or \$1,500 less than expected. Ex. 98 (Theriault Aff.) ¶ 18.

89. Bionicle Plumber had a similar experience. Bionicle’s April 2017 agreement with Ram stated express fees of \$999 and \$499, for total fees of \$1,498. Ex. 119 at RCLG000076323. Yet at Braun’s instruction, Ram deducted \$2,498, or \$1,000 more than stated. *Id.* at RCLG000076314. When questioned under oath, Braun testified that Ram charged Bionicle more than its express fixed fees because of the “10 percent” clause in Ram’s agreement. Ex. 38 (Braun Tr.) at 64:13-17.

b. Respondents Charge Fees Exceeding Both Their Express Fees and Their Percentage-Based Fees

90. In any event, Respondents regularly charge ACH Program Fees exceeding both their express fixed fees and their purported percentage-based fees. Ram’s advance to CRB Employment, Inc. is one example of many. Ram’s agreement with CRB Employment provided for an advance of \$20,000, Ex. 133 at RCLG00078020, and its Fees Appendix provided for a \$999 ACH Program Fee and a “WAIVED” Origination Fee, as shown below:

Origination Fee - \$WAIVED to cover Underwriting and related expenses.

ACH Program Fee - \$999.00 (or 10 % of the funded amount, depending on size of advance) ACH's are labor intensive and are not an automated process, requiring us to charge this fee to cover costs.

Id. at RCLG00078025. This \$999 express fee, when deducted from Ram's \$20,000 advance, *id.* at RCLG000078020, would have yielded a net cash advance of \$19,001.

91. But instead of a fee of \$999, Respondents charged \$3,998, as shown below in an email from Braun to Reich, Giardina, and Gregg:

PLEASE FUND - RAM - *WIRE* (reich will send rob reimburse)

20K @ 29,980 - 399 DAILY - 3,998 ACH -

NET TO MERCHANT -
16,002 - RECURRING 399

Id. at RCLG000078018. Ram's \$3,998 in fees was four times the \$999 express fee and twice the fee that would have been charged as "10% of the funded amount," which would have been \$2,000 ($\$20,000 \times 10\% = \$2,000$). *See id.*

92. Similarly, Viceroy agreed to provide a \$200,000 advance to Head to Toe Therapy, Inc., minus an Origination Fee of \$4,999 and an express ACH Program Fee of \$4,999, indicating a net advance of \$190,002. *See Ex. 163* at RCLG000043808, RCLG000043816. In an email to his colleagues, Braun instructed that Viceroy charge the merchant the \$4,999 Origination Fee, as stated, but increased the ACH Program Fee to \$34,999 – far more than either the \$4,499 express fee or 12% of the \$200,000 advance. *See id.* at RCLG000043806. The result was a net cash advance of only \$160,002. *Id.*

93. Respondents also overcharge merchants on their Origination Fees. For example, Viceroy agreed to provide Fountain Park Healthcare, LLC an advance of

\$150,000 and represented that it would charge an Origination Fee of \$14,999 and no ACH Program Fee. Ex. 145 at RCLG000000817. In fact, Viceroy charged an Origination Fee of \$17,999 and an ACH Program Fee of \$1,999, as instructed in an email from Braun, for a total overcharge of \$4,999. *Id.* at RCLG000000809; *see also* Ex. 38 (Braun Tr.) at 87:16-23 (explaining that an Origination Fee is also called a “PSF,” for “professional services fee”).

94. Respondents also disregard their representations that they will lower merchants’ fees and instead charge whatever fees they wish. For example, Ram’s 2017 agreement with Wyldewood Cellars stated that Ram would provide a \$40,000 advance, minus an Origination Fee and an ACH Program Fee of \$1,999 each. Ex. 57 (Brewer Aff.) ¶ 4. Wyldewood owner John Brewer concluded that these express fees were excessive and that he would not agree to them. *Id.* ¶ 5. He hand-edited Ram’s Fees Appendix to cross out these amounts, substituting total fees of \$999 – indicating a net advance of \$39,001 – and initialed his edits. *Id.* ¶¶ 5, 7; Ex. 73 (Hickel Aff. Ex. A) at RCLG000078356. Steve Reich orally agreed to this reduction in a “funding call” with Wyldewood on May 17, 2017. Ex. 57 (Brewer Aff.) ¶¶ 6-7. That same day, Braun emailed Wyldewood’s signed agreements and forms to Reich, Giardina, and Gregg. Ex. 269 at RCLG000078348. Despite the merchant’s signed note and Reich’s oral agreement to the fee reduction, Braun instructed his colleagues to deduct \$3,998 in fees, leaving a net advance to Wyldewood of only \$36,002. *Id.*; *see also* Ex. 57 (Brewer Aff.) ¶ 12.

95. Instances identified by the NYAG in which Respondents have overcharged merchants on their fees are shown in the chart below:

Fee Overcharges In Excess of Respondents' Express Fees and Percentage-Based ACH Program Fees

Merchant Name	Type of Overcharge	Advance Amount	Origination Fee (PSF)		ACH Program Fee				Total Overcharge		Exhibit
			Express Amount	Actual Amount	Express Amount	Percentage for ACH Fee	Purported Percentage-Based ACH Fee	Actual Amount	Above Express Fees Only	Above Express Orig. Fee and Percentage-Based ACH Fee	
Amco Mechanical Contractors	Ram charged more than both its express fees and its percentage-based ACH fee.	\$ 35,000	\$ -	\$ 3,499	\$ 1,899	10%	\$ 3,500	\$ 3,499	\$ 5,099	\$ 3,498	Ex. 108 at RCLG000077357, -363
Angelica	Ram charged more than its express fees.	\$ 15,000	\$ 1,499	\$ 1,499	\$ 799	12%	\$ 1,800	\$ 1,499	\$ 700	\$ (301)	Ex. 109 at RCLG000092599, -609
Atlantic Imprints	Viceroy charged more than its express fees.	\$ 100,000	\$ 3,999	\$ -	\$ 3,999	12%	\$ 12,000	\$ 15,998	\$ 8,000	\$ (1)	Ex. 115 at RCLG000044285, -295
Benchmark Builders	Ram charged more than both its express fees and its percentage-based ACH fee.	\$ 200,000	\$ 19,999	\$ 12,499	\$ 19,999	12%	\$ 24,000	\$ 37,499	\$ 10,000	\$ 5,999	Ex. 117 at RCLG000098862, -673
Bionicle Plumber (1)	Ram charged more than its express fees.	\$ 20,000	\$ 999	\$ -	\$ 499	10%	\$ 2,000	\$ 2,498	\$ 1,000	\$ (501)	Ex. 119 at RCLG000076314, -323
Bionicle Plumber (2)	Ram charged more than its express fees.	\$ 35,000	\$ 1,499	\$ -	\$ 999	10%	\$ 3,500	\$ 4,998	\$ 2,500	\$ (1)	Ex. 121 at RCLG000084055, -065
Bionicle Plumber (3)	Ram charged more than both its express fees and its percentage-based ACH fee.	\$ 40,000	\$ 1,299	\$ -	\$ 1,099	12%	\$ 4,800	\$ 6,298	\$ 3,900	\$ 199	Ex. 122 at RCLG000092089, -099
Bionicle Plumber (4)	Ram charged more than its express fees.	\$ 40,000	\$ 1,999	\$ -	\$ 1,999	12%	\$ 4,800	\$ 4,998	\$ 1,000	\$ (1,801)	Ex. 120 at RCLG000098907, 917
CRB Employment	Ram charged more than both its express fees and its percentage-based ACH fee.	\$ 20,000	\$ -	\$ -	\$ 999	10%	\$ 2,000	\$ 3,998	\$ 2,999	\$ 1,998	Ex. 133 at RCLG000078018, -025
Charlies's Paint & Body Shop	Ram charged more than its express fees.	\$ 10,000	\$ 999	\$ -	\$ 199	10%	\$ 1,000	\$ 1,998	\$ 800	\$ (1)	Ex. 127 at RCLG000076063, -070
Diamond Scaffold Servs. Grp.	Ram charged more than both its express fees and its percentage-based ACH fee.	\$ 50,000	\$ 4,999	\$ 14,998	\$ 4,999	10%	\$ 5,000	\$ -	\$ 5,000	\$ 4,999	Ex. 135 at RCLG000071063, -071
Fountain Park Healthcare	Viceroy charged more than its express fees and purported to waive its ACH fee.	\$ 150,000	\$ 14,999	\$ 17,999	\$ -	NA	NA	\$ 1,999	\$ 4,999	NA	Ex. 145 at RCLG000000809, -817
HD Turf Properties	Ram charged more than both its express fees and its percentage-based ACH fee.	\$ 22,000	\$ 2,000	\$ 500	\$ 2,000	12%	\$ 2,640	\$ 5,899	\$ 2,399	\$ 1,759	Ex. 162 at RCLG000114922, -932
Head to Toe Therapy	Viceroy charged more than both its express fees and its percentage-based ACH fee.	\$ 200,000	\$ 4,999	\$ 4,999	\$ 4,999	12%	\$ 24,000	\$ 34,999	\$ 30,000	\$ 10,999	Ex. 163 at RCLG000043806, -816

Merchant Name	Type of Overcharge	Advance Amount	Origination Fee (PSF)			ACH Program Fee				Total Overcharge			Exhibit
			Express Amount	Actual Amount	Express Amount	Percentage for ACH Fee	Purported Percentage Based ACH Fee	Actual Amount	Above Express Fees Only	Above Express Orig. Fee and Percentage-Based ACH Fee			
KNH Wholesale	Viceroy charged more than both its express fees and its percentage-based ACH fee.	\$ 60,000	\$ 3,999	\$ 2,249	\$ 3,999	12%	\$ 7,200	\$ 12,948	\$ 7,199	\$ 3,998	Ex. 175 at RCLG000116184, 194		
King Rebar	Ram charged more than both its express fees and its percentage-based ACH fee.	\$ 20,000	\$ 1,299	\$ -	\$ 299	10%	\$ 2,000	\$ 3,998	\$ 2,400	\$ 699	Ex. 174 at RCLG000076836, 844		
Lincoln Peak	Richmond charged more than its express fees and purported to waive its percentage-based ACH fee.	\$ 20,000	\$ 2,000	\$ 5,200	\$ 999	NA	NA	\$ 999	\$ 3,200	NA	Ex. 184 at RCLG000068145, 153		
Knots Landing Motors	Ram charged more than its express fees.	\$ 35,000	\$ 3,499	\$ -	\$ 3,499	12%	\$ 4,200	\$ 7,500	\$ 502	\$ (199)	Ex. 176 at RCLG000090649, -652		
LT Recruiting Service	Ram charged more than both its express fees and its percentage-based ACH fee.	\$ 4,000	\$ -	\$ 400	\$ 699	10%	\$ 400	\$ 699	\$ 400	\$ 699	Ex. 221 at RCLG000080325, -327		
MRM Consulting	Ram charged more than its express fees.	\$ 25,000	\$ 1,999	\$ -	\$ 999	10%	\$ 2,500	\$ 4,498	\$ 1,500	\$ (1)	Ex. 192 at RCLG000079109, 117		
Main St. Bistro	Ram charged more than both its express fees and its percentage-based ACH fee.	\$ 10,000	\$ 999	\$ 250	\$ 999	12%	\$ 1,200	\$ 2,447	\$ 699	\$ 498	Ex. 186 at RCLG00011745, -746		
NOLA Cajun Seafood II	Ram charged more than both its express fees and its percentage-based ACH fee.	\$ 15,000	\$ 499	\$ -	\$ 499	12%	\$ 1,800	\$ 2,998	\$ 2,000	\$ 699	Ex. 195 at RCLG000087964, -975		
Oasis Home Care of Broward	Ram charged more than both its express fees and its percentage-based ACH fee.	\$ 70,000	\$ 999	\$ -	\$ 5,999	10%	\$ 7,000	\$ 13,998	\$ 7,000	\$ 5,999	Ex. 197 at RCLG000073243, -250		
Optimis Corp.	Richmond charged more than both its express fees and its percentage-based ACH fee.	\$ 100,000	\$ -	\$ 6,500	\$ -	12%	\$ 12,000	\$ 1,999	\$ 8,499	\$ (3,501)	Ex. 200 at RCLG000043868		
Orion Megivern	Richmond charged more than both its express fees and its percentage-based ACH fee. The \$3,163 amount at right represents all fees Richmond	\$ 10,000	\$ 999	\$ -	\$ 899	12%	\$ 1,200	\$ 3,163	\$ 1,265	\$ 964	Ex. 202_ at 1, 9; Ex. 201 (Megivern Aff.) ¶ 14		
Patriot Brands	Richmond charged more than both its express fees and its percentage-based ACH fee.	\$ 25,000	\$ 2,499	\$ 6,500	\$ 1,299	10%	\$ 2,500	\$ 1,000	\$ 3,702	\$ 2,501	Ex. 210 at RCLG000074593, -601		
Perry Coast Construction	Ram charged more than both its express fees and its percentage-based ACH fee.	\$ 50,000	\$ 2,999	\$ 4,999	\$ 2,499	10%	\$ 5,000	\$ 4,999	\$ 4,500	\$ 1,999	Ex. 214 at RCLG000075975, -981		

Merchant Name	Type of Overcharge	Advance Amount	Origination Fee (PSF)			ACH Program Fee			Total Overcharge			Exhibit
			Express Amount	Actual Amount	Express Amount	Percentage for ACH Fee	Purported Percentage Based ACH Fee	Actual Amount	Above Express Fees Only	Above Express Orig. Fee and Percentage-Based ACH Fee		
Precision Mechanical	Ram charged more than both its express fees and its percentage-based ACH fee.	\$ 20,000	\$ 1,999	\$ 499	\$ 1,999	12%	\$ 2,400	\$ 5,698	\$ 2,199	\$ 1,798	Ex. 217 at RCLG000111759, -771	
Provista Software Int'l	Ram charged more than both its express fees and its percentage-based ACH fee.	\$ 100,000	\$ 3,499	\$ -	\$ 1,999	10%	\$ 10,000	\$ 18,998	\$ 13,500	\$ 5,499	Ex. 223 at RCLG000076573, -575	
Reid & Reid Recovery	Richmond charged more than both its express fees and its percentage-based ACH fee.		\$ 500	\$ 699	\$ -	10%	\$ -	\$ 1,300	\$ 1,499	\$ 1,499	Ex. 225 at RCLG000070188, -196	
RXMM Management	Ram charged more than both its express fees and its percentage-based ACH fee.	\$ 20,000	\$ 1,999	\$ 1,000	\$ 1,999	12%	\$ 2,400	\$ 4,398	\$ 1,400	\$ 999	Ex. 229 at RCLG000111336, -346	
SZJ, Inc.	Ram charged more than both its express fees and its percentage-based ACH fee.	\$ 20,000	\$ 99	\$ -	\$ 1,299	10%	\$ 2,000	\$ 2,998	\$ 1,600	\$ 899	Ex. 232 at RCLG000074561, -568	
S.A.S. Express	Viceroy charged more than both its express fees and its percentage-based ACH fee.	\$ 50,000	\$ 4,999	\$ 1,999	\$ 4,999	12%	\$ 6,000	\$ 13,998	\$ 5,999	\$ 4,998	Ex. 236 at RCLG000113019, -028	
Salon Professional Services	Ram charged more than its express fees and purported to waive its percentage-based ACH fee.	\$ 125,000	\$ 9,999	\$ 12,500	\$ 1,999	NA	NA	\$ 4,999	\$ 5,501	NA	Ex. 234 at RCLG000072630, -638	
Select Motors of Tampa	Richmond charged more than both its express fees and its percentage-based ACH fee.	\$ 100,000	\$ -	\$ 9,999	\$ -	12%	\$ 12,000	\$ 8,999	\$ 18,998	\$ 6,998	Ex. 239 at RCLG000087669, -673	
Sun City Family Medical Practice	Ram charged more than its express fees.	\$ 20,000	\$ 1,499	\$ -	\$ 999	10%	\$ 2,000	\$ 3,498	\$ 1,000	\$ (1)	Ex. 249 at RCLG000076878, -884	
T&C, LLC	Ram charged more than both its express fees and its percentage-based ACH fee.	\$ 30,000	\$ 1,200	\$ 300	\$ 1,200	12%	\$ 3,600	\$ 5,699	\$ 3,599	\$ 1,199	Ex. 252 at RCLG000111853, -863	
West Edge Halo	Ram charged more than its express fees.	\$ 20,000	\$ 499	\$ 799	\$ 499	10%	\$ 2,000	\$ 699	\$ 500	\$ (1,001)	Ex. 266 at RCLG000067909, -912	
Willhoit Enterprises	Ram charged more than both its express fees and its percentage-based ACH fee.	\$ 55,000	\$ 2,299	\$ 2,999	\$ 2,250	10%	\$ 5,500	\$ 5,499	\$ 3,949	\$ 699	Ex. 267 at RCLG000071836, -838	
Wyldewood Cellars	Ram charged \$3,998 in total fees even Reich orally agreed to \$999 in total fees.	\$ 40,000	\$ 999	\$ 1,999	\$ -	NA	NA	\$ 1,999	\$ 2,999	NA	Ex. 267 at RCLG000071836, -843	
XCPNLS Bus. Servs. of Illinois	Viceroy charged more than both its express fees and its percentage-based ACH fee.	\$ 50,000	\$ 4,999	\$ 1,250	\$ 4,999	12%	\$ 6,000	\$ 14,747	\$ 5,999	\$ 4,998	Ex. 271 at RCLG000111670, -681	

3. Respondents Reduce Merchant Cash Advances by “Reserve” Amounts They Do Not Disclose

96. In addition to reducing merchant cash advances by excess fees, Respondents reduce merchant cash advances by withholding “reserve” amounts, which they may or may not eventually provide to the merchant. Respondents’ agreements do not provide for such reserves.

97. For example, Richmond entered an agreement in which it agreed to provide Maysco Freight Service, Inc. (“Maysco”) an advance of \$10,000, minus fees totaling \$1,899, indicating a net advance of \$8,101. Ex. 190 at RCLG000023081, - 3089. As Braun has admitted, Maysco’s signed papers do not provide for Respondents to keep any portion of its cash advances as a reserve. Ex. 38 (Braun Tr.) at 79:6-18. Nonetheless, Braun instructed his colleagues on December 30, 2016 to deduct a \$4,000 reserve from Maysco’s \$10,000 cash advance, leaving a net advance of only \$4,601:

```
PLEASE FUND - RCG - ***WIRE***  
  
10K@14,990-299 DAILY - 500 PSF - 899 ACH - RESERVE 4K  
  
NET TO MERCHANT  
4,601 - RECURRING 299
```

Ex. 190 at RCLG000023081. Richmond did not subsequently pay to Maysco the missing \$4,000 that it withheld. *See generally, e.g.*, Ex. 26 (excerpt of Richmond’s bank statements from December 2016 through March 2017).

98. Respondents have repeatedly deducted such “reserve” amounts from merchant cash advances, even though their agreements provide for no such deductions. *Compare, e.g.*, Ex. 233 at RCLG000063347 (Ram agreement providing

for a \$75,000 cash advance to Salon Professional Services, not indicating any deduction for a reserve) *with id.* at RCLG000063345 (email from Braun to Giardina and Gregg instructing that merchant’s advance be reduced by a \$25,000 reserve, plus fees, leaving a net advance of only \$38,501); *compare* Ex. 194 at RCLG000022384 (Richmond agreement providing for \$150,000 cash advance to Netbrands Media Corp. not indicating any reserve amount) *with id.* at RCLG000022381 (email from Braun instructing that merchant’s advance be reduced by a \$65,000 reserve, plus fees, leaving a net advance of only \$65,001).

4. Respondents Spring Late Changes on Merchants after They Have Already Signed Respondents’ Agreements and Confessions of Judgment

99. Respondents have used their “funding calls,” which occur after Respondents obtain merchant’s signed papers but before funding the advance, as an occasion to inform merchants that their fees will be higher than previously disclosed or agreed to. Once the agreements and confessions of judgment are signed, the merchants have no leverage to push back against Respondents’ changes. *See e.g.*, Ex. 266 at RCLG000067910 (email from a Ram representative forwarding a signed Ram agreement and stating, “[C]razy bitch about fees had to lower to 5% but we can try on funding call.”); *see also* Ex. 253 at RCLG000106783-784 (email from Braun discussing Merchant Agreement and asking, “[W]hy are fees so low?” and response from Reich stating, “[I]ll get coj [confession of judgment] and we will rip fees”).

100. Respondents often change the terms of their agreements after receiving advice from their underwriter, Stacie Motyl. Respondents solicit her advice only after obtaining merchants’ signed agreements, at which point any

change in the terms of an advance means deviating from what the merchant has already agreed to. *See, e.g.*, Ex. 189 at RCLG000022557 (email from Motyl discussing a “SIGNED” agreement for an advance to Maysco and recommending “holding back 4k”); Ex. 144 at RCLG00023130 (email from Motyl concerning a “SIGNED” agreement for an advance to Foster Healthcare and recommending reducing the advance from \$20,000 to \$12,000).

101. Jennifer Savastino, owner of Gannon Pest Control, Inc., located in Solvay, New York, describes such an experience from the merchant’s perspective:

On or about that same day [after signing and returning Richmond’s forms], I spoke by telephone with . . . Jonathan Braun. . . Mr. Braun told me that Gannon was not eligible for an advance of \$15,000 and that an advance from Richmond would be in the amount of only \$10,000, minus fees, which was to be repaid by Gannon in the amount of \$14,490.

This was a surprise, because the initial number of \$15,000 was printed on Richmond’s forms when I received them, and I had signed the forms with the understanding that Richmond had already authorized an advance in that amount.

Ex. 95 (Affidavit of Jennifer E. Savastino (“Savastino Aff.”)) ¶¶ 8-10.

5. Respondents Misrepresent the Basis of their Fees

102. Respondents misrepresent the work they do to justify the fees they deduct from merchants’ advances. They state in their Fees Appendix that they charge the ACH Program Fee because “ACH’s are labor intensive and are not an automated process, requiring us to charge this fee to cover costs.” Ex. 1 at RCLG000098917. In fact, Respondents perform no such “labor intensive” process of reviewing merchants’ bank accounts in order to determine their daily payment amounts but instead process debits through “automatic debits.” *Supra* ¶¶ 63-68.

103. Respondents also misrepresent in their Fees Appendix that they charge Origination Fees “to cover Underwriting and related expenses,” *e.g.*, Ex. 1 at RCLG000098917. But the Origination Fee has nothing to do with underwriting. As testified by Braun, “Origination is a broker fee,” Ex. 38 (Braun Tr.) at 87:15, and is “paid out in the form of a commission towards the brokerage,” *id.* at 88:13-17; *see also id.* at 107:14-15 (discussing “the PSF, origination, brokerage fee, up-front fee, whatever you want to refer to it as”).

6. Respondents Misrepresent the Amounts of Their Daily Debits

104. Respondents misrepresent to merchants the amounts they will debit from their bank accounts as daily payments. For example, Ram represented to MRM Consulting in its May 25, 2017 agreement that it would charge MRM a daily payment of \$699, as shown here:

Total Purchase Price: \$25,000.00 Specified Percentage: 10 % Specific DAILY Amount: \$ 699.00 Total Purchased Amount: \$ 37,475.00

Ex. 99 (Theriault Aff. Ex. A) at RCLG000079112.

105. Braun then forwarded MRM’s signed agreement to Reich, Giardina, Gregg, and Motyl and instructed that it be charged not \$699 a day but instead \$999:

PLEASE FUND - RAM - *WIRE* (REICH WILL SEND ROB - REIMBURSE)
25K @ 37,475 - 999 DAILY - 4,498 ACH FEE

NET TO MERCHANT
20,502 - RECURRING 999

Ex.192 at RCLG000079109; *see also* Ex. 98 (Theriault Aff.) ¶ 19 (testifying that Ram “daily debited \$999, or \$300 more than Ram had stated”).

106. In the case of Triad Well Service, Respondents debited two bank accounts at once, both for Triad and its related company, Triad Specialty Solutions,

LLC, when Triad had agreed that only one debit should be charged. Ex. 79 (Kramer Aff.) ¶¶ 20-21. By doing so, Richmond charged Triad a daily payment of \$1,998, twice the agreed-upon amount of \$999. *Id.* ¶ 22. “At that rate,” testifies Michael Kramer, Triad’s owner, “Triad would have been forced to repay the entire \$44,970 repayment amount to Richmond in about a month.” *Id.*

107. These and other instances in which Respondents have charged merchants more for their daily debits than agreed to are shown in the chart below:

Merchant	Advance Issued by	Daily Debit Amount in Agreement	Actual Daily Debit Amount	Exhibit
MRM Consulting	Ram	\$ 699	\$ 999	Ex. 192 at RCLG000079109, -112
NOLA Cajun Seafood II	Ram	\$ 239	\$ 299	Ex. 195 at RCLG000087964, -975
Patterson Property Team	Richmond	\$ 299	\$ 499	Ex. 211 at RCLG000044268, -269
Bruce W. Phillips d/b/a Expedited Carriers	Richmond	\$ 199	\$ 399	Ex. 125 at RCLG000044449, -461
Provista Software	Ram	\$ 2,999	\$ 3,999	Ex. 223 at RCLG000076573, -575
Sun City Family Medical Practice	Ram	\$ 599	\$ 999	Ex. 249 at RCLG000076878, -880
Triad Well Service	Richmond	\$ 999	\$ 1,998	Ex. 259 at RCLG000042132, -143

7. Respondents Continue to Debit Merchants’ Bank Accounts after Their Advances Have Been Paid off

108. Respondents continue debiting merchants’ bank accounts even after they have paid off their advances. For example, Optimis Corp. paid off the \$139,900 repayment amount on a cash advance issued by Richmond on October 10, 2018 but Richmond continued debiting Optimis’s account by the daily payment of \$1,169 for several days longer, resulting in an overcharge of \$8,563. Ex. 91 (Price Aff.) ¶ 30-31. Respondents have provided no refund for this overcharge. *Id.*

109. Respondents fail to promptly cease their debits and issue refunds when merchants complain that their bank accounts are still being charged even after their advances are repaid in full. Jennifer Savastino, owner of Gannon Pest Control, testified that Richmond continued to debit her business's bank account after it had fully repaid its repayment amount of \$14,990. Ex. 95 (Savastino Aff.) ¶¶ 13. Savastino had to make numerous calls to Richmond before it ceased debiting the business's account and finally refunded the overcharge. *Id.*

8. Respondents Misrepresent that They Will Provide Flexible Payment Plans and Will Reconcile Merchants' Payment Amounts

110. As demonstrated above, Respondents debit merchants' accounts at fixed daily amounts, which they do not reconcile based on merchants' actual receivables, resulting in finite repayment terms. *Supra* ¶¶ 63-68. Nevertheless, Respondents misrepresent that they offer flexible payment plans and will reconcile merchants' daily payment amounts both before and after they debit money from merchants' bank accounts.

111. In its website, Ram falsely advertises, "Unlike traditional loans, merchant cash advances do not have fixed payment amounts each month with a final end payment date. Instead, repayments are based in part by sales [sic], providing repayment flexibility to business owners." Ex. 21 at 2; *see also id.* (advertising "flexible repayments"). Richmond echoes these false promises, advertising in its website that it offers "business loan alternatives . . . with no fixed repayment term and payment structures that put minimal strain on business cash flow." Ex. 20 at 2; *see also id.* at 3 ("We are willing to work with clients on payment

options to fit their individual needs.”); *id.* at 4 (advertising “flexible pricing and payback options”).

112. Respondents repeat such misrepresentations in their direct communications with merchants. Braun told Michael Gianni, owner of Touch Plate Properties, that daily payments would be at fixed amounts but said, “I’m willing to work with you if there are any problems,” which Gianni understood to mean Richmond would adjust payment amounts if needed. Ex. 69 (Gianni Aff.) ¶ 7. A broker working with Richmond told Michael Kramer, owner of Triad Well Service, that if its “business underwent a slow period Richmond would be flexible, would ‘work with’ [it], and would be willing to ‘restructure’ the payment plan.” Ex. 79 (Kramer Aff.) ¶ 9. *See also, e.g.,* Ex. 85 (Pennington Aff.) ¶ 10 (broker working with Ram told Pennington “that Ram could ‘work with’ [him] if [his] business was having a problem making its daily payments”).

113. Respondents make similar representations in their merchant agreements and forms. As noted above, *supra* ¶ 63, Respondents falsely state that they will monthly “reconcile” merchants’ payment amounts based on a “Specified Percentage” after debiting the payments (hereafter “Monthly Reconciliation Clause”). The Monthly Reconciliation Clause states:

RCF will debit the specific daily amount each business day and upon receipt of the Merchant’s monthly bank statements on or about the eighteenth day of each month reconcile the Merchant’s Account by either crediting or debiting the difference from or back to the Merchant’s Account so that the amount debited per month equals the specified percentage.

E.g., Ex. 1 at RCLG000098909.

114. Respondents also state that they will reconcile merchants' payment amounts by calculating payments before they are debited. This clause (hereafter "Payment Calculation Clause") states, "[T]he way your advance is set up RCF needs viewing access to your bank account each business day in order to calculate the amount of your daily payment." *E.g., id.* at RCLG000098919; *see also* Ex. 38 (Braun Tr.) at 129:18-21, 141:23-142:7, 143:17-144:7 (explaining that a merchant cash advance issuer would in theory engage in "reconciliation . . . on a daily basis or weekly basis" by logging into a merchant's bank account "to determine what the specified percentage of the receivables would be"). Respondents include this Payment Calculation Clause in a form in which Respondents require merchants to provide the passwords and other log-in information to their bank accounts ("Bank Access Form"). *E.g.,* Ex. 1 at RCLG000098919.

115. Respondents also misrepresent that they will not hold merchants liable if they are unable to make payments due to a business slowdown or bankruptcy. This clause states:

If Future Receipts are remitted more slowly than RCF may have anticipated or projected because Merchant's business has slowed down, or if the full Purchased Amount is never remitted because Merchant's business went bankrupt or otherwise ceased operations in the ordinary course of business, and Merchant has not breached this Agreement, Merchant would not owe anything to RCF and would not be in breach of or default under this Agreement.

E.g., Ex. 1 at RCLG000098910 § 1.8.

116. Respondents' representations – that they provide flexible payment plans, that that they reconcile merchants' payment amounts, and that merchants will not be liable in the event of a business slowdown or bankruptcy – are false.

117. In reality, Respondents debit merchants' bank accounts only by fixed daily amounts, which they do not reconcile. *Supra* ¶¶ 63-68; *see also* Ex. 45 (Aboumerhi Aff.) ¶ 10 ("I am aware of no instance during Texas Tactical's dealings with Richmond in which Richmond 'reconciled' this daily payment, despite the terms stated in Richmond's papers."); *id.* ¶ 11 ("I am also unaware of Richmond viewing Texas Tactical's bank account online 'each business day in order to calculate the amount of [its] daily payment,' as Richmond stated in its papers that it would do."); Ex. 48 (Auboine Aff.) ¶ 13 (testifying that Respondents did not reconcile merchants' payment amounts despite the representations in their agreements); *see also* Ex. 75 (Kadri Aff.) ¶ 14 (same); Ex. 91 (Price Aff. ¶ 25 (same).

118. When merchants find themselves unable to pay Respondents' high daily payments, instead of "working with" merchants or reconciling their payment amounts, Respondents either claim default and file for judgment, which is a means of collecting additional revenue in the form of accelerated payment and penalties, *see, e.g.*, Ex. 45 (Aboumerhi Aff.) ¶¶ 25-26, or push merchants to sign up for new cash advances with even more onerous terms.

119. Sometimes in an event of purported default they do both, as testified to by Nabih Kadri, owner of Smart Courier:

On or about March 6, 2018, I learned . . . that our company's account at Bank of America had been blocked and that about \$123,000 had been withdrawn from the account based on a court judgment.

I was shocked that Richmond had the ability to obtain a judgment against Smart Courier and to seize assets from its bank account when we had made every payment to Richmond that was called for under our agreements. It appeared that Richmond and Mr. Braun were in a position to immediately destroy the business that I had built.

Mr. Braun called me on or around the same day that the account was blocked. He told me that I was a “nice guy” and said, “I want to help you out.” He told me that Smart Courier could pay off the outstanding balance due to Richmond, plus about \$38,000 in fees and penalties he claimed Smart Courier owed to Richmond, by taking out another cash advance from a company called GTR Source LLC [a company on information and belief operated by Reich, *infra* ¶ 175].

It appeared based on Richmond’s actions to date that we had no choice but to agree to Mr. Braun’s terms in order to avoid going out of business. Smart Courier entered an agreement dated March 6, 2018 for a new advance with GTR Source.

Ex. 75 (Kadri Aff.) ¶¶ 28-31.

9. Although Respondents’ Agreements Authorize Them to Debit Merchants’ Accounts Only “Each Business Day,” They Do so for Holidays as Well

120. Respondents misrepresent in their Merchant Agreements that they will “debit the specific daily amount each business day.” *E.g.*, Ex. 1 at RCLG000098909. In fact, Respondents debit merchants’ bank accounts not only for “business days” but for holidays as well. These are “extra payments,” as Gregg observed in an email. Ex. 29 (email from Gregg to Actum Processing stating, “[P]lease make sure that RCG RAM VICEROY and MEGA are set at holiday limits on the 3rd (next Tuesday) so I can run the extra payments.”)

121. Respondents typically collect these “extra payments,” *id.*, by debiting accounts twice on the next business day after a holiday, when banks are open. Paul Price testifies as follows:

During the six-month term of Optimis’s advance from Richmond there were three federal holidays: Memorial Day, May 28, 2018; Independence Day, July 4, 2018; and Labor Day, September 3, 2018. Because these were federal holidays, they were not “business day[s]” on which payments were due. Yet on the first business day after each of these three holidays – on May 29, July 5, and September 4, 2018 – Richmond

debited Optimis's bank account for an extra payment of \$1,169, in addition to the single \$1,169 payment that was due on those business days.

Ex. 91 (Price Aff.) ¶ 29. *See also, e.g.*, Ex. 85 (Pennington Aff.) ¶ 25 (broker told Michael Pennington that Ram needed to double-debit merchant's account after holidays "in order to keep the repayment term of the advance 'on track'"); Ex. 98 (Theriault Aff.) ¶ 22 (testifying concerning Respondents' practice of debiting for holidays); Ex. 61 (Bush Aff.) ¶ 17 (same); Ex. 75 (Kadri Aff.) ¶ 20 (same); Ex. 57 (Brewer Aff.) ¶ 13 (same);.

122. Because Respondents also take a regular debit for that business day, each holiday debit results in a double daily debit, causing a higher likelihood of default due to insufficient funds. For example, Richmond issued a cash advance to Fu Kong, Inc., of El Monte, California, and observed three insufficient-funds events, two of which occurred on February 22, 2018, the day Respondents double-debited debtors' accounts for a holiday, apparently the preceding Presidents' Day, which was February 19, 2018. *See* Ex. 149 ("HOLIDAY RETURNS"), Ex. 151; *see also* Ex. 148 (Richmond agreement with Fu Kong). Following these three insufficient-funds events, including the one for a holiday, Richmond filed Fu Kong's confession of judgment in court along with an affidavit by Gregg stating, falsely, that Fu Kong had "continuously failed to remit collections" to Richmond. Ex. 150 at 3 ¶ 11; *see also infra* ¶¶ 123-36 (discussing Respondents' filing of confessions of judgment and false affidavits).

C. **Respondents Use Confessions of Judgment and False Affidavits to Defraud Merchants and the Courts**

123. Central to Respondents' collection activities is their practice of requiring merchants to execute confessions of judgment prior to funding a merchant cash advance. Respondents then file the confessions freely, in circumstances not provided for in their Merchant Agreements, and sometimes when there is no default at all. With the confessions, Respondents file affidavits in which they (1) falsely testify that merchants have made "Specified Percentage Payments," when in reality Respondents debit payments based only on fixed daily amounts, and (2) often misrepresent to courts merchants' payment histories, amounts due, and the facts of their purported defaults.

1. **Respondents Use Confessions of Judgment to Obtain Rapid Judgments Against Merchants with No Documentary Evidence, No Notice to the Merchants, and No Judicial Review**

124. The filing of confessions of judgment is provided for under CPLR 3218. As a general matter, confessions of judgment are handled by New York courts in a ministerial fashion. After a party files a confession in court, the office of the court clerk typically issues a judgment in that party's favor, with no need for the party to request judicial intervention and with no judicial review.

125. Respondents draft merchants' confessions as affidavits in court proceedings in New York State Supreme Court, regardless of whether the merchants' businesses are located in New York or elsewhere. For example, the merchant Bionicle Plumber is located in Mesa, Arizona, but the confession that Ram drafted for signature by its owner, Michael Pennington, allowed Ram to file for

judgment in New York State Supreme Court in the counties of Richmond, Orange, Westchester, Kings, Erie, or Ontario or in United States District Court for the Southern District of New York. Ex. 90 (Pennington Aff. Ex. E) at 4 ¶ 4. *See also id.* at 4 (confession of Bionicle filed in Richmond County); Ex. 130 at 4 (confession of Congregation Shule, based in Brooklyn, New York, filed in Dutchess County); Ex. 134 at 5 (confession of Delicias de Minas Restaurant, LLC, a merchant based in Newark, New Jersey, filed in Erie County).

126. Each confession includes a caption naming Richmond, Ram, or Viceroy as the plaintiff and the merchant and its guarantor as defendants, even though at the date of signing no dispute has arisen and no court proceeding has been filed. *E.g., id.* Respondents draft the confessions so that each merchant and guarantor confesses judgment in the full repayment amount of the cash advance, “less any payments timely made,” plus legal fees at 25% of such sums and 9% interest from the date the Merchant Agreement was signed. *See, e.g., id.* at 5 ¶ 5.

127. Respondents obtain judgments immediately upon filing the confessions of judgment in court and without providing notice to the merchant. For example, Ram filed Wyldewood Cellars’ confession on June 14, 2017, giving Wyldewood no notice it was doing so, and received a judgment against it that same day. Ex. 57 (Brewer Aff.) ¶ 23; *see also, e.g.,* Ex. 85 (Pennington Aff.) ¶ 41, Ex. 90 (Pennington Aff. Ex. E) at 4, 8 (Ram filed Bionicle Plumber’s confession on January 12, 2018, giving merchant no notice it was doing so, and received judgment the same day); Ex. 77 (Kadri Aff. Ex. B) at 4, 7 (Richmond filed Smart Courier’s confession of judgment on March 5, 2018 and received judgment the next day).

128. Respondents often file for judgment just days after a merchant has signed its agreement and confession. In the case of WD Stores, LLC, Ram filed the merchant's confession a mere eight days after the merchant signed it. Ex 265 at 8 ¶ 9, 11 (confession signed by merchant June 7, 2018 and judgment issued on June 15, 2018). *See also, e.g.*, Ex. 100 at 6 ¶ 9, 8 (showing seven days between signing of confession by A&L Tile, Inc. on April 10, 2018 and judgment entered in Richmond's favor on April 17, 2018); Ex. 185 at 6 ¶ 9, 8 (showing 14 days between signing of confession by Lyudmila Karapetyan on Sept. 13, 2018 and judgment entered in Richmond's favor on Sept. 27, 2018).

129. Respondents have obtained at least 400 judgments against merchants from New York State Supreme Court by filing merchants' confessions of judgment, as determined from a review of publicly available documents electronically filed by Respondents.

2. Respondents File False Affidavits Misrepresenting to Courts the Nature of the Payments They Collect

130. When Respondents file a merchant's confession of judgment, they also file an "Affidavit of Non-Payment," which is signed by either Michelle Gregg or Robert Giardina. Respondents file no exhibits in support of their affidavits, not even copies of the agreements that are purportedly defaulted on. *See generally, e.g.*, Ex. 60 (Brewer Aff. Ex. C).

131. In their affidavits, Gregg and Giardina misrepresent to courts that the amounts of the payments they collect from merchants are based on a percentage of merchants' receivables. In reality, as set forth above, Respondents collect payments set to fixed daily payments that are not reconciled based on any such percentage.

Supra ¶¶ 63-68. By misrepresenting to courts that that their cash advances are repaid based on a percentage of merchants’ receivables, Respondents create the illusion that the cash advances are purchases of receivables and not usurious loans.

See Mem. of Law in Support of the Verified Petition at 37.

132. For example, in an affidavit filed for judgment against Wyldewood Cellars, Michelle Gregg testified:

Pursuant to the [Merchant] Agreement, WCI [Wyldewood] authorized RCF to debit from its bank account, by means of an online ACH debit, ten percent (10%) of WCI’s accounts receivable collections (the “Specified Percentage”), until the purchased amount of receivables – \$59,600.00 – was paid in full.

...

WCI initially made Specified Percentage Payments of \$10,984.00 through automatic debits; however, as of June 14, 2017, WCI has intentionally instructed their banking institution to cease remitting on collections on receivables purchased by RCF. This constitutes a default under the Agreement.

Ex. 60 (Brewer Aff.) Ex. C at 1-2 ¶ 4, 3 ¶ 11.

133. Gregg’s testimony concerning “Specified Percentage Payments” is false. In reality, Respondents debited Wyldewood’s account based on a fixed daily amount of \$999 and not based on any percentage of its receivables. *Ex. 57 (Brewer Aff.) ¶*

18. John Brewer, Wyldewood’s owner, testifies:

[I]t would have been impossible for Ram to calculate payment amounts based on a Specified Percentage, as Ms. Gregg indicated. Ram requested in May 2017 that Wyldewood provide the password to its bank account, but Wyldewood declined to do so. Without that information, Ram could not have logged into Wyldewood’s account to monitor its receivables and calculate the amounts of “Specified Percentage Payments.” Nor did Ram request (and Wyldewood did not provide) any documents concerning Wyldewood’s receivables from which Ram could have determined such payment amounts.

Id. ¶ 19 (internal citations omitted). *See also* Braun Tr. 129:18-25, 143:17-144:7 (discussing Respondents’ promise to reconcile merchants’ payment amounts by logging into their bank accounts).¹⁵

134. Giardina, like Gregg, has also filed affidavits falsely testifying that merchants have made “Specified Percentage Payments” to Respondents. *See, e.g.*, Ex. 251 at 3 ¶ 11 (affidavit by Giardina testifying that the merchant Surface Source USA, Inc. made “Specified Percentage Payments” to Richmond) *and* Ex. 24 at 67-68 (Daily Debit History showing repeated daily payments by merchant at fixed amount of \$4,899) *and* Ex. 250 at RCLG000067560 (Surface Source agreement providing for \$4,899 daily amount); *see also* Ex. 106 at 3 ¶ 11 (affidavit by Giardina testifying that Alumni Logistics, Inc. made “Specified Percentage Payments”) *and* Ex. 24 at 2 (Daily Debit History showing repeated daily payments by merchant at fixed amount of \$399) *and* Ex. 105 at RCLG000064108 (Alumni Logistics agreement providing for \$399 daily amount).

135. Respondents have testified that merchants have made “Specified Percentage Payments” even when merchants agreed to no “Specified Percentage.” Nabih Kadri testifies as follows:

These statements by Ms. Gregg appear to be false [I]t is false that Smart Courier “authorized RCG to debit from its bank account . . . ten percent (10%) of [its] accounts receivable collections (the ‘Specified

¹⁵ *See also* Pennington Aff. ¶ 39 (“[T]o my knowledge it is false that Bionicle ‘initially made Specified Percentage Payments’ to Ram. Ram debited money from Bionicle’s account based on Ram’s ‘Specific Daily Amount’ of \$799 each day, and not, to my knowledge, based on any Specified Percentage” (internal citations omitted)); Ex. 75 (Kadri Aff.) ¶¶ 25-26 (discussing Gregg’s false testimony concerning “Specified Percentage Payments”); Ex. 48 (Auboine Aff.) ¶ 26 (same); Ex. 69 (Gianni Aff.) ¶ 32 (same); Ex. 79 (Kramer Aff.) ¶ 33 (same).

Percentage’).” The “Specified Percentage” was left blank in Richmond’s November 2017 agreement, and Smart Courier did not authorize any such percentage to be debited.

Ex. 75 (Kadri Aff.) ¶ 25 (internal citations omitted); *see also, e.g.*, Ex. 85

(Pennington Aff.) ¶ 38; Ex. 69 (Gianni Aff.) ¶ 32.

136. Respondents have obtained, on information and belief, hundreds of judgments from New York State Supreme Court based on affidavits by Gregg and Giardina stating that merchants have made (or failed to make) “Specified Percentage Payments.” The fact that Respondents have no practice of reconciling merchants’ payments based on any such percentage, as Braun has admitted, *supra* ¶ 67, indicates that each of these affidavits is false.

3. Respondents File False Affidavits Misrepresenting the Facts and Amounts of Merchants’ Purported Defaults

137. Respondents also misrepresent in their affidavits the facts and amounts of merchants’ purported defaults, as was found by the court in *Richmond Capital Group LLC v. Megivern*, No. 151406/2018, 2018 WL 6674300 (Sup. Ct. Richmond Cnty. Nov. 28, 2018), attached as Ex. 204, and as is shown in affidavits filed by Respondents in other proceedings.

138. Justice Orlando Marrasso found in *Megivern* that Richmond “repeatedly made false, sworn statements to the Court that resulted in the Court entering a Judgment for an inflated amount.” *Id.* at *4. In *Megivern*, Richmond entered into an agreement with the merchant Orion Megivern dated May 14, 2018. *See* Ex. 202 at 1. Under the agreement, Richmond would advance Megivern \$10,000 in exchange for a repayment amount of \$14,500, to be paid in daily

payments of \$299. *Id.* Pursuant to the agreement Megivern made ten daily payments of \$299 each, totaling \$2,990. *Megivern*, 2018 WL 6674300 at *1; *see also* Ex. 24 at 49.

139. Richmond filed Megivern’s confession of judgment and an affidavit signed by Gregg in court on June 1, 2018, the same day that Megivern’s bank rejected Richmond’s daily ACH debit. *Megivern*, 2018 WL 6674300 at *1; *see also* Ex. 203 at 1. Gregg’s affidavit stated that Megivern “initially made Specified Percentage Payments of \$00.00 through automatic debits” and asserted that “[t]here remains a balance due and owing of \$14,500.00 (the ‘Default Amount’).” Ex. 203 at 3 ¶ 11-12. Richmond’s attorney, Marcella Rabinovich, submitted to the court an attorney’s affirmation repeating the falsehood that the merchant had paid no money and owed Richmond \$14,500. *Megivern*, 2018 WL 6674300 at *1. On June 7, 2018, the court issued a judgment in Richmond’s favor for \$14,785.78. *Id.*

140. Megivern then moved for an order modifying or vacating Richmond’s judgment on the basis that, *inter alia*, Gregg and Rabinovich had made false statements to the court. *Id.* at *2. The court granted Megivern’s motion, finding:

The record is replete with evidence that Plaintiff [Richmond] made false statements and misrepresentations to the Court which necessitate the vacatur of the Judgement [sic]. In the Affidavits of Ms. Gregg and Ms. Rabinovich, both stated that Defendants had not paid one dollar under the Agreement, while in fact Defendants had paid \$2,990.00 as of June 1, 2018

. . .

The Court finds that Plaintiff’s actions in making false statements to the Court were meant to undermine the truth-seeking function of the judicial system and essentially made the Court an unwilling participant in its fraud. . . . Defendants have proven by clear and convincing evidence that the Plaintiff acted knowingly to try and hinder the Court’s

adjudication of the case and the Defendants' defense. Plaintiff repeatedly made false, sworn statements to the Court that resulted in the Court entering a Judgment for an inflated amount Therefore, based on the fraud committed on this Court by Plaintiff, the Judgment and Confession by Judgment are hereby vacated. Any lesser sanctions would not suffice to correct the offending behavior since Plaintiff's fraud was central to the substantive issues in the case and Plaintiff's lack of scruples in this case warrant this heavy sanction.

Id. at *3-4.

141. Gregg's affidavit concerning Orion Megivern is just one of many false affidavits by her that Respondents have filed in court. For example, Gregg testified in an affidavit dated June 14, 2017 that Wyldewood Cellars had "made Specified Percentage Payments of \$10,984.00," leaving "a balance due and owing of \$48,616.00" on its total repayment amount of \$59,600. Ex. 60 (Brewer Aff. Ex. C) at 3 ¶¶ 11-12. In fact, Wyldewood had paid Ram \$17,982 as of June 13, 2017, the day prior to Gregg's testimony, meaning that Gregg in her testimony understated Wyldewood's payments by at least \$6,998 ($\$17,982 - 10,984 = \$6,998$) and overstated its balance due by the same amount. Ex. 57 (Brewer Aff.) ¶¶ 20-22. *See also* Ex. 85 (Pennington Aff.) ¶ 40 (testifying regarding false affidavit of Gregg); Ex. 79 (Kramer Aff.) ¶ 34 (same); Ex. 255 (Sands Aff.) ¶¶ 26-27 (same).

142. In an affidavit concerning the merchant Paraguaybox Corp., Gregg falsely testified that the merchant's mere request for a payment adjustment constituted default. Gregg testified,

. . . PBC [Paraguaybox] contacted RCG demanding that they lower payments without providing any financial documentation to demonstrate a need for lowered payments. PBC Demanded that the payments be lowered, stating that RCG had no choice but to comply or PBC will not be making future payments. This constitutes a default under the Agreement.

Ex. 207 at 3 ¶ 11. In fact, Richmond’s agreement did not state that Paraguaybox would default on the agreement merely by “demanding that [Richmond] lower payments” and stating that absent such a reduction future payments would not be made. *See* Ex. 206 § 3.1 (“Events of Default”).

4. Respondents File Confessions of Judgments in Circumstances Their Own Agreements Do Not Provide for

143. Respondents regularly file confessions of judgment when merchants have purportedly fallen behind on their payments – missing as few as three payments – even though Respondents’ agreements do not authorize them to do so.

144. For example, the merchant Fu Kong signed an agreement with Richmond on January 30, 2018. Ex. 148 at RCLG000043369. Fu Kong’s account had insufficient funds for a payment on February 14, 2018. Ex.151. Fu Kong then made five successful payments in a row, Ex. 24 at 23, before having two insufficient-funds events in the same day, February 22, 2018. Ex. 149. (At least one of these attempted debits was a “HOLIDAY RETURN[],” *id.*, apparently processed for Presidents’ Day, *see supra* ¶¶ 122.)

145. After Fu Kong’s three missed payments, Richmond declared Fu Kong to be in default and filed its confession of judgment in New York State Supreme Court. *See generally* Ex. 150. In an affidavit, Gregg testified (falsely) that Fu Kong had “continuously failed to remit collections” to Richmond. *Id.* at 3 ¶ 11.

146. But Respondents’ agreements do not disclose that they will file merchants’ confessions of judgment based on missed payments. Richmond’s agreement with Fu Kong specifies that Richmond may file confessions “[u]pon

breach of any provision in this paragraph § 1.10.” Ex. 148 at RCLG000043371 § 1.10 (“Protection 3”). Paragraph 1.10, in turn, does not identify missed payments as a basis for filing a confession of judgment but instead identifies other circumstances, such as when a merchant prevents funds from being deposited into its bank account. *Id.* § 1.10.

147. Respondents’ Fees Appendix (which is not identified as part of their Merchant Agreement) states that Fu Kong could miss payments due to insufficient funds “up to **THREE TIMES ONLY** before a default is declared,” *id.* at RCLG000043377, but neither the Fees Appendix nor the Merchant Agreement states that any such event justifies the filing of a confession, *see generally id.*

148. Respondents’ improper filing of Fu Kong’s confession of judgment is one of many. They regularly file merchants’ confessions of judgment based on mere missed payments despite their representation that they will do so only in other circumstances. *Compare, e.g.,* Ex. 169 at 3 ¶ 11, 4 (confession of JD National Drywall Corp. filed in court by Ram, along with affidavit of Gregg stating that merchant defaulted by not making payments) *with* Ex. 168 at RCLG000093510 at § 1.10 (Ram’s agreement not providing for filing JD National Drywall’s confession based on missed payments).¹⁶

¹⁶ *Compare also* Ex. 224 at 3 ¶ 11, 4 (confession of Provista Software, International, Inc. filed in court by Ram, along with affidavit of Gregg stating that merchant defaulted by not making payments) *with* Ex. 223 at RCLG000076576 § 1.11 (Ram’s agreement not providing for filing merchant’s confession based on missed payments); *compare* Ex. 177 at 3 ¶ 11, 4 (confession of Knots Landing Motors, Inc. filed in court by Richmond, along with affidavit of Gregg stating that merchant defaulted by not making payments) *with* Ex. 176 at RCLG000090656 § 1.11

D. Respondents Cause Merchants to Enter into Unconscionable Contracts

149. Respondents use procedurally unconscionable tactics to market their merchant cash advances and obtain merchants' signatures on them, and they draft their agreements to be replete with substantively unconscionable provisions.

1. Respondents Engage in Procedurally Unconscionable Tactics

150. Respondents use procedurally unconscionable tactics to market their cash advances and obtain merchants' signatures on them. These tactics include:

- Preying on merchants at times of financial desperation, *supra* ¶ 34;
- Printing their agreements in small type, including, until late 2017 and early 2018, agreements in illegible, 4-point type, *supra* ¶ 45;
- Misrepresenting to merchants, *inter alia*, (1) the amounts of their cash advances and the fees they deduct, (2) the amounts, frequency, and duration of their daily debits from merchants' bank accounts; (3) that they will provide flexible repayment plans, will "work with" merchants that are unable to handle their daily payments, and will reconcile merchants' payment amounts both before and after the payments are debited; and (4) the circumstances in which they will file merchants' confessions of judgment, *supra* ¶¶ 80-122, 143-48; and
- Pushing merchants to sign and return their agreements and confessions of judgment as quickly as possible, giving them minimal time to review them and discuss them with counsel or other advisers, Ex. 61 (Bush Aff.) ¶ 12 (broker working with Ram sent merchant draft agreement and urged him to return it in about a day, before expiration of a "special offer" for that month); Ex. 98 (Theriault Aff.) ¶ 12 (broker working with Ram told merchant to sign Ram's papers "as quickly as possible").

(Richmond's agreement not providing for filing merchant's confession based on missed payments).

2. Respondents' Agreements Contain Unconscionable Provisions

151. Respondents' agreements contain a host of substantively unconscionable provisions. Among these are terms requiring merchants to repay their cash advances at triple- and quadruple-digit interest rates, as discussed above, *supra* ¶¶ 75-79.

152. Respondents' agreements also include a number of unconscionable clauses that, applied together, enable them to immediately obtain and execute judgments against merchants and their guarantors in the event of purported default, including the following:

- Clauses requiring merchants to execute confessions of judgment, *e.g.*, Ex. 1 at RCLG000098911 § 1.10 (“Protection 3”), which Respondents may file in New York court in case of purported default, with no notice, in order to obtain immediate judgments, regardless of whether the merchant is located in New York, *supra* ¶ 124-29;
- Clauses providing that Respondents have purchased not only merchants' “receivables” but also “all of Merchant’s future accounts, contract rights and other entitlements” and that Respondents’ interests are guaranteed and secured in the event of bankruptcy or business failure, *e.g.*, *id.* at RCLG000098909, RCLG000098914; *supra* ¶¶ 70-74;
- An acceleration clause stating that in the event of certain defaults, including any interruption or termination of a merchant’s business operations, “[t]he full uncollected Purchase Amount” – much of which consists of interest that would eventually be due over time – is “due and payable in full immediately,” *e.g.*, *id.* at RCLG000098911 § 1.10 (“Protection 1”);
- Clauses stating that Respondents hold secured interests pursuant to the UCC and that they may seek to execute on those assets without moving for relief from an automatic stay in bankruptcy, *e.g.*, *id.* at RCLG000098914, *see also supra* ¶¶ 72-73; and
- Clauses stating that a bankruptcy proceeding or the interruption or termination of a merchant’s business constitutes default and triggers

the acceleration clause, *e.g., id.* at RCLG000098911 § 1.10(d); Ex. 183 at RCLG000104543 § 3.1(a).

153. Respondents' agreements include numerous other unconscionable provisions, including the following:

- Clauses requiring merchants to provide to Respondents "all of the information, authorizations and passwords necessary" to log into merchants' bank accounts," *e.g., id.* at RCLG000098910 § 1.1; *see also id.* at RCLG000098919;
- Refinancing terms requiring that when a merchant obtains a new cash advance to refinance a prior cash advance, the total repayment amount of the prior advance is deducted from the principal of the new cash advance, *e.g., id.* at RCLG000098920, including all interest that would have been paid over time;
- Clauses providing that merchants must pay Respondents' attorneys' fees in the event of litigation in which Respondents are successful, but not requiring Respondents to pay merchants' attorneys' fees if they lose, *id.* at RCLG000098911 § 1.10 ("Protection 5"); and
- Power-of-attorney clauses in which each merchant "irrevocably appoints RCF as its agent and attorney-in-fact," with power to, *inter alia*, "collect monies due," "receive, endorse, and collect any checks," "sign Merchant's name on any invoice," and "file any claims or take any action . . . which RCF may deem necessary" for collection purposes, *id.* at RCLG000098910 § 1.9.

E. Respondents Harass and Threaten Merchants to Pressure Them into Repaying Advances

154. Respondents subject merchants to a torrent of threats and harassment, typically delivered by Braun via telephone, when merchants ask Respondents for adjustment of their daily payments or when Respondents determine that merchants have defaulted.

155. Michael Gianni, owner of Touch Plate Properties, experienced this practice after he instructed his bank to suspend debits to his business's account due

to an unexplained, unauthorized \$10,000 debit. Ex. 69 (Gianni Aff.) ¶¶ 20-27.

Shortly after the suspension was put in place, Braun called Gianni by phone:

Mr. Braun . . . asked, “Where’s my money?” I explained to Mr. Braun that ACH debits had been blocked by the bank because someone had improperly debited \$10,000 from Touch Plate’s account.

Mr. Braun answered, “You owe me money. Give me my money now.” He said that if I did not pay him, “I’ll deal with this my own way.”

...

Mr. Braun called me again later that day. He said, “I want my money. He warned me not to “fuck with” him and said, “I can literally make your life a living hell.” He said, “I will destroy you,” and added, “You don’t know who you’re dealing with right now.”

Id. ¶¶ 22-24. Gianni later called Braun back, and Braun responded with more threats, saying, “You’re fucking with the wrong guy.” *Id.* ¶ 25. “Mr. Braun then said, ‘I know where you live. I know where your mother lives.’ He said, ‘I will take your daughters from you.’ ‘You have no idea what I’m going to do.’” *Id.* ¶ 26.

156. Numerous other witnesses have testified that Braun has made insults and threats by way of collecting payments, including the following:

- Braun, identified as “John,” spoke with Michael Pennington, of Bionicle Plumber, and demanded, “Why don’t you pay me, you redneck piece of shit?” Ex. 85 (Pennington Aff.) ¶ 44. Braun then said, “I’m going to get my money one way or the other,” and in one of their calls told Pennington, “Be thankful you’re not in New York, because your family would find you floating in the Hudson.” *Id.* ¶ 45.
- Braun told Said Aboumerhi, of Texas Tactical Gear & Firearms, “You don’t know who you’re f***ing dealing with,” and “We can get you wherever we want.” Ex. 45 (Aboumerhi Aff.) ¶ 19. As a result of Braun’s threats Mr. Aboumerhi began carrying a gun with him each day, which he had not done previously. *Id.* ¶ 21.
- Braun told Jean-Marie Auboine, of JMA Chocolates, “We will take everything from you.” Ex. 48 (Auboine Aff.) ¶ 21. Braun said, “We are from New York,” and warned, “Do not mess with us.” *Id.* Auboine testifies, “[Braun] said that Richmond could take my business and my home, and he said, ‘We’ll take care of you and your family.’”

Id. Auboine grew distraught as a result of Braun’s threats, and a long-time colleague of Auboine told him that she had never seen him in a state of distress such as he was in at the time. *Id.* ¶ 23.

- Braun told Jerry Bush, of J.B. Plumbing, “I will kill you,” when Bush spoke with Braun about excess debits Richmond had taken from J.B. Plumbing’s bank account. Ex. 61 (Bush Aff.) ¶ 22. Braun also threatened to contact other companies that had issued cash advances to J.B. Plumbing and tell them to declare default, just as Richmond had done, saying, “We’re all connected.” *Id.*
- When Texas Mills, LLC fell behind on its payments to Ram, Braun repeatedly called its principal and swore at and berated him, calling him a “dumb-shit” and “f**khead.” Ex. 255 (Affidavit of Anton K. Sands, previously filed in *Ram Capital Funding, LLC v. Texas Mills, LLC*, No. 151456/2017 (Sup. Richmond Cnty.) (“Sands Aff.”)) ¶ 35.
- Braun subjected Avraham Lesches, former president of Congregation Shule, Inc., to a string of detailed threats and insults, threatening, *inter alia*, “to come down there and beat the shit out of [Lesches] in 770 Eastern Parkway” in Brooklyn, New York, and writing, “I am going to make you bleed. You are going to regret the day you met me.” Ex. 132 (Lesches Aff.) ¶¶ 30, 41.
- When Triad Well Service blocked Richmond’s excessive debits from its bank account, Braun, identified as “Jon,” called Michael Kramer, its owner, and threatened, “We know where you live,” and “said that if Triad did not pay Richmond, ‘We’ll go after your family.’” Ex. 79 (Kramer Aff.) ¶ 29.

F. Respondents Have Demolished the Businesses, Finances, and Credit of Merchants and Their Principals

157. Respondents have fraudulently and illegally collected tens of millions of dollars from merchants throughout the United States.

158. Respondents’ payment processor, Actum Processing, reports that Respondents collected over \$77 million in daily payments from 1,359 merchants, by count of the undersigned, between August 2016 and December 2018 alone. *See* Ex. 25 (excerpt of last three pages of report of Actum Processing, filtered to report only successfully debited payments, stating total payments of \$77,298,631.80). This

amount does not include daily payments collected by Respondents through other means or outside of this 28-month time period.

159. On information and belief, Respondents have collected tens of millions of dollars more from merchants' bank accounts by executing upon judgments issued against the merchants by New York State Supreme Court as the result of Respondents' filing of merchants' confessions of judgment.

160. Richmond advertises on its website that it has done business with over 10,000 "clients." Ex. 20 at 2.

161. Respondents have inflicted immense harm upon merchants through their fraudulent and illegal products. Jean-Marie Auboine testifies as follows:

Richmond's conduct has been damaging to JMA Chocolates and to me personally. I continue to fear that Richmond may send people to our business or to my home to threaten or harm my colleagues, my family, and me.

When I began JMA Chocolates in 2011, I was filled with optimism and with gratitude that I, as an artisan and entrepreneur from a foreign country, could pursue my passion and build a business in the United States. It has been heartbreaking to see that there are people and companies in our economy who are allowed to prey on small businesses in difficult, cash-strapped circumstances, forcing them to comply with unbearable terms of repayment and seemingly attempting to strip them of every dollar their businesses have earned.

Ex. 48 (Auboine Aff.) ¶¶ 29-30.

162. Michael Pennington testifies as follows:

Ram's conduct, as set forth above, did enormous damage to my business and its finances. Ram pushed Bionicle into a major cash shortage and caused it to be unable for a time to pay its employees' wages. Two of our employees quit during this time because of their missed paychecks. Ram nearly forced Bionicle to close its doors and go out of business. We were able to stay afloat only by relying on personal credit cards and other sources of funds

Ex. 85 (Pennington Aff.) ¶ 47.

163. Jerry Bush testifies as follows:

J.B. Plumbing had no further dealings with Richmond after winter 2016, but after that point my business had been forced by Richmond into a cycle of depending on new cash advances, from Yellowstone Capital LLC and others, in order to pay its expenses and to make the payments on prior cash advances. This cycle continued for over two years.

The merchant cash advance cycle has been tragic for my business and for me. It aggravated our financial condition to the point that, in August 2018, I was forced to close down J.B. Plumbing, the business my father started 30 years previously, and had to lay off our 20 employees. I blamed myself for the loss.

It seemed to me that as long as I was alive these business debts from merchant cash advances would chase my family, and so in a moment of fear and despair I attempted to take my life. I was unable to do so only because I was found. I am alive today, for which I am grateful, but my business is gone, and I am still pursued by cash advance companies attempting to collect on their loans.

Ex. 61 (Bush Aff.) ¶¶ 27-29.¹⁷

164. Respondents are well aware of the damage that their conduct does to merchants. On March 8, 2017, Respondents obtained the signature of the merchant AntheC Inc. on a Merchant Agreement providing for an advance of \$10,000, repayable over “20 DAYS” through payments of \$999 each, for a total repayment amount of \$19,990. Ex. 111 RCLG000070901, RCLG000070907. Later that month, an account statement from AntheC’s bank account that was sent to Braun and

¹⁷ See also, e.g., Ex. 69 (Gianni Aff.) ¶ 34 (“The financial harm caused by these judgments [obtained by Richmond and other merchant cash advance providers] has caused Touch Plate to lose personnel, caused a number of our real estate projects to fall into default on their mortgages, damaged my personal finances, caused me to fear that I will lose my house, and harmed my relationships with loved ones.”); Ex. 75 (Kadri Aff.) ¶ 33 (“Richmond did massive damage to Smart Courier and its finances. Richmond brought the company within days of closing its doors and eliminating the jobs of its 150 employees.”)

Giardina showed that Richmond had already collected \$12,987 from the merchant. Ex. 110 at RCLG000045560-564 (excerpted). In an email, Braun boasted, “[I] am in profit, i did 999 a day on 10k and cleared 13k already LOL.” Ex. 112 at RCLG000054243. Stacie Motyl responded,

[I]t’s disgusting.... you’re ruining this guys business and you think it’s funny

[G]ive the dude a break for a second

Id.

165. Numerous other merchants that received cash advances from Respondents have declared bankruptcy or have been the subject of involuntary bankruptcy filings. *See, e.g., In re Premier PCS of TX, LLC*, No. 17-32021-hcm, ECF No. 1 (Bankr. W.D. Tex. Dec. 6, 2017) (voluntary petition pursuant to Chapter 11 filed by recipient of advances from Viceroy); Ex. 219 at RCLG000092011 (agreement between merchant and Viceroy); *see also In re Shiloh Mgmt. Servs., Inc.*, No. 17-01458-JMM, ECF No. 1 (Bankr. D. Id. Nov. 1, 2017) (involuntary petition pursuant to Chapter 7 filed by recipient of advance from Ram); Ex. 242 at RCLG000063264 (agreement between merchant and Ram); *see also In re BCW Express Delivery, Inc.*, No. 17-52368-mbm, ECF No. 1 (Bankr. E.D. Mich., Aug. 31, 2017) (voluntary petition pursuant to Chapter 11 filed by recipient of advances from Viceroy); Ex. 116 at RCLG000078319 (agreement between merchant and Viceroy).

III. EACH RESPONDENT IS RESPONSIBLE FOR THE UNLAWFUL AND FRAUDULENT CONDUCT SET FORTH HEREIN

A. Robert Giardina Is a Decision-Maker for Respondents and Directly Participates in Their Misdeeds

166. Robert Giardina is the Managing Partner of Richmond and is the owner of Richmond and Viceroy Capital Funding. *Supra* ¶ 26. Braun has described Giardina during testimony as his “[b]oss” and as having veto power over Richmond’s management decisions. Ex. 38 (Braun Tr.) at 17:5-7, 19:15-17, 23:9-18. In Braun’s words, “[N]othing could have got done without him saying it’s okay.” *Id.* at 23:7-8.

167. Giardina is a hands-on supervisor. Braun and Giardina shared an office until at least December 2018, and during that time Giardina was present at the office three days each week. *Id.* at 23:19-24:17, 26:13-14; *see also id.* at 15:6-21 (Braun terminated December 2018). Braun regularly discussed merchant cash advances within Giardina’s earshot. *Id.* at 24:18-21. Giardina is aware of the work done by his colleagues and in one instance praised Reich as a colleague even as he criticized others whose performance he found unacceptable. *See* Ex. 34 (email from Giardina to Actum Processing stating that Giardina terminated two Richmond representatives and stating, “We are still working with Steve Reich, he is a great guy and I do A lot of business with him”).

168. Giardina is personally responsible for the following acts of Respondents, among others:

- Causing Richmond to advertise merchant cash advances as “loans” and falsely advertise flexible payment plans (among other misrepresentations), *supra* ¶¶ 38, 111, on Richmond’s website, which Giardina supervises, Ex. 38 (Braun Tr.) at 34:4-11;

- Reviewing new applications for merchant cash advances, *e.g.*, Ex. 276 at RCLG000153488, and instructing colleagues to draft new cash advance agreements, *e.g.*, Ex. 275 at RCLG000027844;
- Planning for merchant cash advances to be administered according to finite repayment terms, *e.g.*, Ex. 155 at RCLG000154989;
- Supervising a bank account from which Richmond wired money to merchant cash advance recipients, Ex. 38 (Braun Tr.) at 21:14-22:4; Ex. 26 at 1 (excerpts of statements of Richmond account with Empire State Bank in Giardina’s name);
- Supervising Respondents’ relationship with Actum Processing, which is responsible for debiting money in fixed daily amounts from merchants’ bank accounts, *see* Ex. 27;
- Instructing Actum Processing to double-debit merchants’ bank accounts for the days after holidays, even though Respondents represent that they will debit only for “business days,” *e.g.*, Ex. 30 at 2 (email from Giardina stating, “[W]e want to draL [draft] on the holiday so i want to draL 2 payments on tuesday to make up for the draL im not pulling on monday[.]”); *see also* Ex. 32; Ex. 33; and
- Executing affidavits in which he falsely testifies that merchants have made “Specified Percentage Payments” to Respondents when in fact all such payments are based on fixed daily amounts, *supra* ¶ 134.

169. Giardina knows or should know that Respondents’ merchant cash advances are usurious loans. Giardina regularly receives emails from his colleagues in which they discuss plans to administer merchant cash advances at amounts and finite terms indicating interest rates far in excess of those permissible for loans under New York law. *Supra* ¶ 57-58; *see also* Ex. 283.

170. Giardina also knows or should know that Respondents overcharge merchants on fees and short-change them on their advances. Giardina has regularly received emails from Braun including amounts different from those the merchants have agreed to, *supra* ¶¶ 91, 94, 98, 105, and Giardina is solely

responsible for issuing cash advances to merchants from Richmond's bank account.

See Ex. 38 (Braun Tr.) at 21:7-25.

B. Jonathan Braun Has Been a Decision-Maker for Respondents and Has Directly Participated in Their Misdeeds

171. Braun has been a decision-maker for Respondents with influence far beyond his title of "Senior Funding Manager." See, e.g., Ex. 190 at

RCLG000023082. He is personally responsible for the following acts, among others:

- Marketing cash advances to merchants by telephone as "loans," e.g., Ex. 69 (Gianni Aff.) ¶ 8, subject to finite repayment terms, e.g., Ex. 75 (Kadri Aff.) ¶ 3;
- Falsely promising to merchants that Respondents will be flexible and will "work with" merchants who have difficulty with their daily payments, e.g., Ex. 69 (Gianni Aff.) ¶ 7;
- Instructing that merchant cash advances be administered at amounts indicating interest rates in the triple and quadruple digits, far above the rates permissible for loans under New York law, e.g., *supra* ¶ 53;
- Instructing that merchant cash advances be subject to finite repayment terms, such as "10 PAYMENTS" or "20 DAYS," *supra* ¶¶ 57, 58 n.10;
- Instructing that merchant cash advances be administered at amounts different from those set forth in Respondents' signed agreements, *supra* ¶ 95;
- Participating in underwriting conversations in which Respondents discuss only such factors as merchants' credit and bank balances, not their actual "receivables," *supra* ¶ 61;
- Determining when merchants have defaulted on their agreements and instructing colleagues to file confessions of judgment, despite Respondents' promises to the contrary, see, e.g., *supra* 68; Ex. 231 at RCLG000088606; and
- Calling merchants by telephone and harassing them, threatening to seize and destroy their property and businesses, and threatening violence to them and their families, *supra* ¶¶ 154-56.

C. **Steve Reich Is a Decision-Maker for Respondents and Directly Participates in Their Misdeeds**

172. Reich owns Ram and is its principal decision-maker. Ex. 38 (Braun Tr.) at 18:17-19:14. Reich is also closely involved in decision-making for merchant cash advances issued by Richmond and Viceroy. *Id.* at 27:6-10. Reich is personally responsible for the following acts of Respondents, among others:

- Communicating to merchants that cash advances are subject to fixed daily payments, Ex. 85 (Pennington Aff.) ¶ 27, and finite repayment terms, Ex. 57 (Brewer Aff.) ¶ 8, and planning for the advances to be administered accordingly, *supra* ¶¶ 57, 58 n.10;
- Causing Ram to advertise itself as a “lender” and merchant cash advances as “loans” and falsely advertising flexible payment plans (among other misrepresentations) on Ram’s website, *supra* ¶¶ 37, 111, which Reich supervises, *see* Ex. 38 (Braun Tr.) at 36:7-23;
- Participating in underwriting conversations in which Respondents discuss only such factors as merchants’ credit and bank balances, not their receivables, *e.g.*, Ex. 263 at RCLG000093210;
- Causing Ram, as Ram’s owner, to collect fees from merchants in excess of the amounts indicated in Ram’s agreements, *see supra* ¶¶ 83-95;
- Falsely promising to merchants that Ram will honor merchants’ refusal to pay fees, then causing Ram to collect fees in excess of those the merchant agreed to, Ex. 57 (Brewer Aff.) ¶¶ 6-7, 12;
- Managing Ram’s relationship with Actum Processing, with Actum Processing, which is responsible for debiting money in fixed daily amounts from merchants’ bank accounts, *see* Ex. 28;
- Causing Ram to wire money to merchants for their cash advances in amounts different from those represented in Ram’s agreements, *supra* ¶¶ 83-95, 104, 107; and
- Causing Ram to debit merchants’ bank accounts at higher daily amounts than those shown in Ram’s agreements, *supra* ¶ 107.

173. Reich knows or should know that Respondents’ merchant cash advances are usurious loans. Reich regularly receives emails from his colleagues in

which they discuss their plans to administer merchant cash advances at amounts indicating interest rates far in excess of those permissible for loans under New York law and. *Supra* ¶ 57-58; *see also* Ex. 283.

174. Reich knows or should know that Respondents administer cash advances in amounts different from those stated in their signed agreements. Braun has regularly sent Reich emails in which Braun stated such disparate amounts, and he has attached to each email a copy of the signed agreements whose terms he was contradicting. *E.g.*, Exs. 119-122. Reich is responsible for wiring money to merchants, at those deficient amounts, to fund Ram's advances. *E.g.*, Ex. 108 at RCLG000077357, (email from Braun stating that "REICH WILL WIRE" cash advance to merchant, minus fees totaling \$6,998); *id.* at RCLG000077363 (Fees Appendix stating fee amounts of only \$1,899).

175. Reich is active in the merchant cash advance business outside of his work with Richmond, Ram, and Viceroy. Reich also supervises the issuance and servicing of merchant cash advance business through the company GTR Source, LLC, which advertises itself "[a]s a private lender" in a website almost identical to Ram's website. *Compare* Ex. 22 *with* Ex. 21; *see* Ex. 216 ¶ 37 (affidavit of Reich identifying GTR as a "company of which I am a member and manage," previously filed in *Pineville Cmty. Hosp. Ass'n, Inc. v. Ram Capital Funding LLC*, No. 514985/2018 (Sup. Ct. Kings Cnty.)).

D. Michelle Gregg Is a Decision-Maker for Respondents and Directly Participates in Their Misdeeds

176. Respondent Gregg is a decision-maker for Respondents and serves as Managing Director and Director of Finance for both Richmond and Viceroy. *Supra*

¶ 32. Gregg is personally responsible for the following acts of Respondents, among others:

- Managing Respondents' collection of payments from merchants and their debiting of merchants' bank accounts through Actum Processing, *see* Ex. 38 (Braun Tr.) at 30:3-16, 59:8-9;
- Causing merchant cash advances to be repaid through daily debits at fixed amounts over finite terms and at interest rates far in excess of those permissible for loans under New York law, *see supra* ¶59; Ex. 283;
- Causing payments to be debited from merchants' bank accounts at fixed daily amounts higher than those disclosed in Respondents' signed agreements, *see supra* ¶¶ 104-107;
- Instructing Actum Processing to debit "extra payments" from merchants' bank accounts for holidays, even though Respondents represented that they would debit only for "business days," Exs. 29, 31;
- Collecting payments for Respondents by contacting merchants by telephone, *e.g.*, Ex. 48 (Auboine Aff.) ¶¶ 27-28 (testifying concerning efforts by Gregg to collect money from JMA Chocolates in June 2019);
- Executing affidavits in which she has falsely testified that merchants have made "Specified Percentage Payments" to the Richmond Entities, when in fact all such payments are based on fixed daily amounts, *supra* ¶¶ 130-36; and
- Executing affidavits in which she has falsely testified concerning the amounts that merchants have paid on their cash advances and the amounts still due, *supra* ¶¶ 137-48.

177. Gregg knows or should know that Respondents' merchant cash advances are usurious loans. She regularly receives emails from her colleagues in which they discuss their plans to administer merchant cash advances at amounts indicating interest rates far in excess of those permissible for loans under New York law. *E.g.*, Ex. 101 at RCLG000051250.

178. Gregg knows or should know that Respondents administer cash advances in amounts different from those stated in their signed agreements. Braun

regularly sent Gregg emails in which he stated such disparate amounts, and he attached to each email a copy of the signed agreements whose terms he was contradicting. *Supra* ¶¶ 91, 94, 98, 105.

Dated: June 10, 2020
New York, New York



John P. Figura
Assistant Attorney General