

cm

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CLASSIC CLOSEOUTS, LLC, a limited liability company, also d/b/a **CLASSICCLOSEOUTS.COM**; **IVAL GROUP, LLC**, a limited liability company; **AYC HOLDING CORP.**; **110 WEST GRAHAM AVENUE CORP.**; **DANIEL J. GREENBERG**, individually, as an officer of **CLASSIC CLOSEOUTS, LLC**, and d/b/a **THIRDFREE.COM**, and as an officer of **IVAL GROUP, LLC**, **AYC HOLDING CORP.**, and **110 WEST GRAHAM AVENUE CORP.**; **YGC ENTERPRISES, INC.**; **STEPHANIE H. GREENBERG**, individually, as an officer of **YGC ENTERPRISES, INC.**; **HAZEN NY INC.**, also known as **HAZEN NY**; and **JONATHAN BRUK**, also known as **JONATHAN J. BROOK** and **YOCHANON BRUK**, individually, as an officer of **HAZEN NY INC.**

Defendants.

Civ. No. 2:09 2692 (LDW) (ETB)

~~(PROPOSED)~~ **DEFAULT
JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF
AGAINST DEFENDANTS CLASSIC
CLOSEOUTS, LLC, IVAL GROUP,
LLC, AYC HOLDING CORP., 110
WEST GRAHAM AVENUE CORP.
AND YGC ENTERPRISES, INC.**

Plaintiff, the Federal Trade Commission ("FTC" or "the Commission"), commenced this action on June 24, 2009 by filing its Complaint against defendants Classic Closeouts, LLC ("CCL") and Daniel J. Greenberg, individually, as an officer of CCL and doing business as ThirdFree.com ("Greenberg" or "Defendant Greenberg"), for injunctive and other equitable relief, including rescission or reformation of contracts, restitution, and disgorgement of ill-gotten

**MOVANT'S COUNSEL IS DIRECTED TO SERVE A COPY
OF THIS ORDER ON ALL PARTIES UPON RECEIPT.**

monies, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and moved for a Temporary Restraining Order (“TRO”) pursuant to Rule 65 of the Federal Rules of Civil Procedure. On June 29, 2009, this Court, having heard oral argument by counsel for the FTC and Greenberg, and having considered the Complaint, memorandum of law, declarations and other exhibits filed in support of the FTC’s motion, issued a TRO that included an asset freeze and appointment of a temporary receiver over CCL.

The Commission filed its First Amended Complaint For Permanent Injunction and Other Equitable Relief (“Amended Complaint”) on July 22, 2009, adding new defendants, including, but not limited to, IVAL Group, LLC (“IVAL”), AYC Holding Corp. (“AYC”), 110 West Graham Avenue Corp. (“110 West Graham”), and YGC Enterprises, Inc. (“YGC”), and naming Defendant Greenberg as an officer of IVAL, AYC, 110 West Graham, and YGC. The Amended Complaint alleges that the defendants were involved in a common enterprise that engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act. The TRO and asset freeze were then extended to defendants IVAL, AYC, 110 West Graham and YGC by agreement of the parties and consent of the Court.

On October 19, 2009, the Commission moved for a preliminary injunction against defendants Greenberg, CCL, IVAL, AYC, 110 West Graham, and YGC.¹ On October 26, 2009, at the Commission’s request, the Court entered an Order for Preliminary Injunction and Other Equitable Relief Against Defendants CCL, IVAL, AYC, 110 West Graham, and YGC (“PI Order”) with asset freeze [Dkt. No. 73].

¹ On October 21, 2009, Defendant Greenberg stipulated to a preliminary injunction order that was entered by the Court on October 26, 2009.

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure and Rule 55.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, defaults were entered against CCL, IVAL, AYC, 110 West Graham, and YGC (collectively, the “Defaulting Defendants”) by the Clerk of the Court on December 4, 2009 [Dkt. No. 82]. The FTC has now moved this Court for entry of a judgment by default and permanent injunction against the Defaulting Defendants pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. Having considered the FTC’s motion, the memorandum and exhibits filed in support of said motion, the Interim Report of Temporary Receiver Angela Tese-Milner, dated August 20, 2009 (“Receiver’s Report”) [Dkt. No. 31-1], and the declaration of Kayon Moodie of Cynergy Data, LLC (“Cynergy”), dated June 9, 2010,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of and the parties to this action.
2. Venue is proper in the United States District Court for the Eastern District of New York.
3. The Commission has authority to seek the relief it has requested, and the Amended Complaint states a claim upon which relief may be granted against the Defaulting Defendants under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).
4. The activities of the Defaulting Defendants are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. The Defaulting Defendants have been properly served with the Summons, Complaint and Amended Complaint, as required by Rule 4 of the Federal Rules of Civil Procedure.
6. The Defaulting Defendants have failed to file an Answer to the Amended Complaint within the time set forth in Rule 12(a) of the Federal Rules of Civil Procedure, or to otherwise

defend this action. The Clerk of the Court entered defaults against the Defaulting Defendants on December 4, 2009 [Dkt. No. 82].

7. The Defaulting Defendants have engaged in a common enterprise with other named defendants, involving an unlawful and fraudulent scheme to charge consumers' credit cards or debit their bank accounts without consumers' authorization and without consumers purchasing any merchandise, and to transfer, divert, and hide the receipts of their unlawful scheme.
8. In numerous instances, the Defaulting Defendants have charged consumers' credit cards or debited consumers' bank accounts without the consumers' authorization, causing substantial injury to consumers in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and sought to conceal the fruits of their illegal activity via repeated inter-company transfers of funds.
9. The Defaulting Defendants' net income from the conduct alleged in the FTC's Amended Complaint amounted to approximately two million, eighty thousand dollars (\$2,080,000) during the period from June through September 2008, after subtracting subsequent refunds or chargebacks and adding all reversals of chargebacks.
10. The FTC is therefore entitled to equitable monetary relief against the Defaulting Defendants in the amount of two million, eighty thousand dollars (\$2,080,000), which is the approximate amount of consumer injury.
11. This Order, and the relief awarded herein, is in addition to, and not in lieu of, any other remedies that may be provided by law, including both civil and criminal remedies.
12. Entry of this Order is in the public interest.

DEFINITIONS

1. **“Asset”** means any legal or equitable interest in, right to, or claim to, any real and personal property including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.
2. **“FTC”** or **“Commission”** means the Federal Trade Commission.
3. **“Individual Defendants”** means Daniel J. Greenberg, individually, as an officer of Classic Closeouts, LLC, and doing business as ThirdFree.com, and as an officer of IVAL Group, LLC, AYC Holding Corp., and 110 West Graham Avenue Corp.; Stephanie H. Greenberg, individually, and as an officer of YGC Enterprises, Inc.; and Jonathan Bruk, also known as Jonathan J. Brook and Yochanon Bruk, individually, and as an officer of Hazen NY Inc.
4. **“Defaulting Defendants”** means Classic Closeouts, LLC, a New York and Nevada limited liability company; IVAL Group, LLC, a New York limited liability company; AYC Holding Corp., a New York corporation; 110 West Graham Avenue Corp., a New York corporation; and YGC Enterprises, Inc., a New York corporation, and their successors and assigns.
5. **“Business Defendants”** means Classic Closeouts, LLC, a New York and Nevada limited liability company; IVAL Group, LLC, a New York limited liability company; AYC Holding Corp., a New York corporation; 110 West Graham Avenue Corp., a New York corporation; YGC Enterprises, Inc., a New York corporation; and Hazen NY Inc., a New York corporation, also known as Hazen NY, and their successors and assigns.
6. **“Defendants”** means all of the Individual Defendants, the Defaulting Defendants and the Business Defendants, individually, collectively, or in any combination.

7. **“Document”** or **“documents”** is synonymous in meaning and equal in scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil Procedure, and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term “document.”
8. **“Express Verifiable Authorization”** means:
 - a. the consumer’s express written or digital authorization to purchase the product or service that is the subject of the transaction and the consumer’s authorization to assess a charge against a specified account for payment. Such authorization must include the consumer’s signature (the term “signature” includes a verifiable electronic or digital form of signature, to the extent such form of signature is recognized as a valid signature under applicable federal law or state contract law); or
 - b. The consumer’s express oral authorization to purchase the product or service that is the subject of the transaction and the consumer’s authorization to assess a charge against a specified account for payment that is audio-recorded, as follows:
 - (i) The recording must evidence that the consumer, during that transaction, at a minimum, has provided the last four (4) digits of the account number to be charged;
 - (ii) The recording must include the entirety of the transaction;
 - (iii) The recording can be identified and located by either the consumer’s name or telephone number; and

- (iv) A copy of the recording must be provided upon request to the consumer, the consumer's bank, credit or debit card company or other billing entity, state attorney general or consumer protection agency, and the Commission.
9. **"Person"** or **"persons"** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.
10. **"Material"** means likely to affect a person's choice of, or conduct regarding, goods or services.
11. The terms **"and"** and **"or"** shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.

ORDER

I. PROHIBITED BUSINESS ACTIVITIES

IT IS HEREBY ORDERED that in connection with the advertising, marketing, promotion, offering for sale, or sale of goods or services by any means whatsoever, including, but not limited to, the Internet, the World Wide Web, or any web site, the Defaulting Defendants and their officers, agents, employees, and corporations, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, including, but not limited to, fictitious business names, are hereby permanently restrained and enjoined from:

- A. Charging, or causing to be charged, any consumer's credit card or debiting, or causing to be debited, any consumer's bank account without the consumer's Express Verifiable Authorization for such charge or debit to be made;

- B. Directly or indirectly misrepresenting, expressly or by implication, that a consumer is obligated to pay any charge or debit that has not been expressly authorized by the consumer;
- C. Making, or assisting in the making of, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact in connection with the advertising, marketing, promoting, offering for sale, or sale of any good or service, including, but not limited to, any false or misleading representation in connection with the advertising, marketing, promoting, offering for sale, or sale of any good or service via the Internet;
- D. Making, or assisting in the making of, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact to credit card companies or financial institutions in connection with disputed posts, charges or debits to consumers' credit cards or bank accounts; and
- E. Using any fictitious, false, or assumed title or name, other than their own proper name or any fictitious business name filed with the appropriate state governmental authorities, or otherwise misrepresenting their true identities in the course of business dealings or in publicly filed documents.

II. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A. Judgment is hereby entered in favor of the Commission and against the Defaulting Defendants, jointly and severally, in the amount of two million, eighty thousand dollars (\$2,080,000) as equitable monetary relief to redress consumer injury. This monetary judgment shall become immediately due and payable by the Defaulting Defendants upon

entry of this Order, and interest computed at the rate prescribed under 28 U.S.C. § 1961(a), as amended, shall immediately begin to accrue on the unpaid balance.

- B. All payments made under this Section shall be made by wire transfer in accordance with directions provided by the Commission.
- C. All funds paid pursuant to this Section shall be deposited into a fund administered by the Commission or its designated agents to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of such equitable relief. If the Commission determines, in its sole discretion, that direct redress of consumer injury is wholly or partially impracticable, or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) that it determines to be reasonably related to the Defaulting Defendants' practices alleged in the Amended Complaint. Any funds not used for such equitable relief shall be deposited to the U.S. Treasury as disgorgement. The Defaulting Defendants shall have no right to challenge the Commission's choice of remedies under this Section.
- D. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.
- E. The Defaulting Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. The Defaulting Defendants shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.
- F. The Defaulting Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the FTC their tax identification numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

III. ASSETS HELD BY THIRD PARTIES

IT IS FURTHER ORDERED that the Defaulting Defendants shall have no right or title to or interest in assets frozen pursuant to Section V of the PI Order, including any assets held by Cynergy Data, LLC and First National Bank of Omaha. In order to partially satisfy the monetary judgment set forth in Section II above, any financial or brokerage institution, escrow agent, title company, commodity trading company, automated clearing house, network transaction processor, business entity, or person served with a copy of this Order, that holds, controls, or maintains custody of any account or asset of, on behalf of, or for the benefit of, any of the Defaulting Defendants, or has held, controlled, or maintained custody of any account or asset of, on behalf of, or for the benefit of, any of the Defaulting Defendants, including, but not limited to, Cynergy Data, LLC and First National Bank of Omaha, shall turn over such asset or account or all funds in such account to the Commission within ten (10) business days of receiving notice of this Order by any means, including, but not limited to, via facsimile. Such turnover or payment shall be made by the method specified in Subsection II.B. above.

IV. RECEIVERSHIP PROVISION

The Temporary Receiver shall continue to be entitled to compensation for performance of her duties at the billing rate previously agreed to by the Temporary Receiver. Within thirty (30) days after service of this Order, the Temporary Receiver shall file with the Court and serve on the parties an accounting and request for such reasonable compensation.

V. LIFTING OF THE ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of the Defaulting Defendants' assets pursuant to the PI Order shall be lifted to the extent necessary to turn over assets as required by

Section III of this Final Order, and upon completion of those transfers, shall be vacated and lifted permanently.

VI. ORDER PROVISION REGARDING CUSTOMER INFORMATION

IT IS FURTHER ORDERED that the Defaulting Defendants, and their officers, agents, employees, and corporations, and those persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, including, but not limited to, fictitious business names, are hereby permanently restrained and enjoined from:

- A. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person which any Defendant obtained prior to entry of this Order in connection with activities related to unauthorized charges to consumers' credit cards or bank accounts, including, but not limited to, any customer information obtained through Classiccloseouts.com; and
- B. Failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.
Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

VII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, the Defaulting Defendants each shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in each of the Defaulting Defendants' possession or direct or indirect control to inspect the business operation;
- B. In addition, the Commission is authorized to use all other lawful means, including, but not limited to:
 - 1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;
 - 2. having its representatives pose as consumers and suppliers to the Defaulting Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defaulting Defendant, without the necessity of identification or prior notice; and
- C. The Defaulting Defendants each shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to

unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

VIII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Order, the Defaulting Defendants shall notify the Commission of any changes in structure of any Defaulting Defendant or any business entity that any Defaulting Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including, but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any such change in the business entity about which any Defaulting Defendant learns less than thirty (30) days prior to the date such action is to take place, such Defaulting Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.
- B. One hundred eighty (180) days after the date of entry of this Order and annually thereafter for a period of five (5) years, the Defaulting Defendants each shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:
1. A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;" and

2. Any other changes required to be reported under Subsection A of this Section.
- C. Each Defaulting Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defaulting Defendant within fifteen (15) days of filing.
- D. For the purposes of this Order, the Defaulting Defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Order to the Commission, to the following address:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room NJ-2122
Washington, D.C. 20580
RE: FTC v. Classic Closeouts, LLC, et al., X090058

Provided that, in lieu of overnight courier, the Defaulting Defendants may send such reports or notifications by first-class mail, but only if the Defaulting Defendants contemporaneously send an electronic version of such report or notification to the Commission at:

DEBrief@ftc.gov.

- E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with each Defaulting Defendant.

IX. RECORDKEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, the Defaulting Defendants and their agents, employees, officers, corporations, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, including, but not limited to, fictitious business names, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly or indirectly, such as through a third party,) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials, including via e-mail or websites; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including, but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the Commission pursuant to the Section titled "Compliance Reporting."

X. DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, the Defaulting Defendants shall deliver copies of this Order as directed below:

- A. Each Defaulting Defendant must deliver a copy of this Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives who

engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon such Defaulting Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

- B. The Defaulting Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

XI. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that each of the Defaulting Defendants, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XII. SCOPE OF ORDER

IT IS FURTHER ORDERED that this Order resolves only claims against the Defaulting Defendants, and does not preclude the Commission from initiating further action or seeking any remedy against any other persons or entities, including, but not limited to, persons or entities who may be subject to portions of this Order by virtue of actions taken in concert or participation with the Defaulting Defendants, and persons or entities in any type of indemnification or contractual relationship with the Defaulting Defendants.

XIII. ENTRY OF THIS DEFAULT JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AND MONETARY RELIEF

IT IS FURTHER ORDERED, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay, and the Clerk of the Court immediately shall enter this Default Judgment and Order for Permanent Injunction and Other Equitable Relief.

XIV. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED, on, this 13 day of December, 2010 at — M.



LEONARD D. WEXLER
United States District Court Judge

Central 204, NY