

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

BLUEHIPPO FUNDING, LLC, a
Maryland Limited Liability
Company and BLUEHIPPO
CAPITAL, LLC, a Nevada Limited
Liability Company,

Defendants.

NO. 09-2-06785-6 SEA

CONSENT DECREE

[CLERK'S ACTION REQUIRED]

I. JUDGMENT SUMMARY

- | | | |
|-----|------------------------------|--|
| 1.1 | Judgment Creditor: | State of Washington |
| 1.2 | Judgment Debtors: | BLUEHIPPO FUNDING, LLC, a
Maryland Limited Liability Company; and
BLUEHIPPO CAPITAL, a Nevada
Limited Liability Company |
| 1.3 | Principal Judgment Amount: | |
| a. | Civil Penalty | \$0.00 imposed (\$25,000.00 suspended
conditioned on compliance with the terms
of the Consent Decree) |
| b. | Restitution | See Section IV |
| 1.4 | Costs & Attorneys Fees: | \$ 25,000.00 |
| 1.5 | Total Judgment: | \$ 25,000.00 (plus restitution and suspended
civil penalty) |
| 1.6 | Post Judgment Interest Rate: | 12% per annum |

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1 **1.7 Attorney for Judgment Creditor:** Shannon Smith, Senior Counsel

2 **1.8 Attorney for Judgment Debtor:** Scott T. Wilsdon

3
4 Plaintiff, State of Washington, having commenced this action pursuant to the Consumer
5 Protection Act, RCW 19.86, and Defendants, BlueHippo Funding, LLC, a Maryland Limited
6 Liability Company and BlueHippo Capital, LLC, a Nevada Limited Liability Company, having
7 waived service with a Summons and Complaint in this matter; and

8 Plaintiff appearing by and through its attorneys, Robert M. McKenna, Attorney General,
9 and Shannon E. Smith, Senior Counsel; and Defendants appearing by and through their
10 attorney, Scott T. Wilsdon; and

11 Plaintiff and Defendants having agreed on a basis for the settlement of the matters
12 alleged in the Complaint, and to the entry of this Consent Decree against Defendants without
13 the need for trial or adjudication of any issue of law or fact; and

14 Plaintiff and Defendants acknowledge that each party has agreed to the entry of this
15 Consent Decree solely for the purposes of settlement. Nothing contained in this Consent Decree
16 shall constitute an admission or concession by Defendants or evidence supporting any of the
17 allegations of fact or law set forth in the Complaint, or of any violation of any state or federal
18 law, rule or regulation, or any other liability or wrongdoing whatsoever. Nothing in this
19 paragraph shall limit the Attorney General from relying on this Consent Decree for the purpose
20 of enforcing it against Defendants; and

21 Defendants recognize and state that this Consent Decree is entered into voluntarily and
22 that no promises or threats have been made by the Attorney General's Office or any member,
23 officer, agent or representative thereof to induce it to enter into this Consent Decree, except as
24 provided herein; and

25 Defendants waive any right they may have to appeal from this Consent Decree; and
26

1 Defendants further agree that they will not oppose the entry of this Consent Decree on
2 the grounds the Consent Decree fails to comply with Rule 65(d) of the Rules of Civil Procedure,
3 and hereby waives any objections based thereon; and

4 Defendants further agree that this Court shall retain jurisdiction of this action for the
5 purpose of implementing and enforcing the terms and conditions of the Consent Decree and for
6 all other purposes; and

7 The Court finding no just reason for delay;

8 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as
9 follows:

10 II. DEFINITIONS

11 2.1 "BlueHippo shall mean BlueHippo Funding, LLC, a limited liability company
12 registered in Maryland and BlueHippo Capital, LLC, a limited liability company registered in
13 Nevada.

14 2.2 "Covered Products" shall mean all merchandise sold or offered for sale by
15 BlueHippo to Washington consumers prior to the entry of this Consent Decree, and "free"
16 products promised to Washington consumers by BlueHippo.

17 2.3 "Properly Completed Order" shall mean an order where: (1) BlueHippo has
18 received full payment from the consumer under a layaway agreement, or (2) BlueHippo has
19 received signed financing documents from the consumer, and the consumer has satisfied all
20 requirements for shipping under the financing agreement, including but not limited to making
21 the required number of timely and consecutive payments.

22 III. GENERAL

23 3.1 Jurisdiction. This Court has jurisdiction over the subject matter of this action and
24 over the parties. The Plaintiff's Complaint in this matter states claims upon which relief may be
25 granted under the provisions of the Consumer Protection Act, RCW19.86, and RCW 63.14,
26 Retail Installment Sales of Goods and Services.

3.2 Defendants. For purposes of this Consent Decree the term “Defendants” where not otherwise specified shall mean BlueHippo Funding, LLC, and BlueHippo Capital, LLC.

IV. INJUNCTIONS

4.1 Application of Injunctions. The injunctive provisions of this Consent Decree shall apply to the Defendants, and the Defendants' successors, assigns, officers, agents, servants, employees, representatives and affiliates, in connection with the offer for sale and sale of Covered Products.

4.2 Notice. Within thirty days following the entry of this Consent Decree, Defendants shall inform all managers and employees, including those employees with supervising responsibilities, of the terms and conditions of this Consent Decree.

4.3 Injunctions. Defendants and all successors, assigns, transferees, officers, agents, servants and employees are hereby permanently enjoined and restrained from directly or indirectly engaging in the following acts or practices in sales to Washington consumers in connection with the offer for sale and sale of Covered Products:

a. Failing or refusing to provide consumers with the Covered Products they ordered in accordance with the agreements Defendants make with the consumers.

b. Failing to clearly and conspicuously disclose, prior to entering into an agreement for the sale or financing of any Covered Products it sells or offers to sell, all material terms and conditions of the offer, including, but not limited to: (1) the total cash price; (2) the total number of payments the consumer must make in order to pay for the merchandise; (3) the number of payments the consumer must make before Defendants will ship the merchandise to the consumer; (4) an accurate description of the merchandise being purchased, including manufacturer or brand name; (5) cancellation and refund policies; and (6) the requirements that must be met before Defendants will order the merchandise for shipping to the consumer.

1 c. In connection with the sale of Covered Products. Defendants shall either
2 advise consumers when merchandise will be shipped, or, if no date is specified, then
3 Defendants must have a reasonable basis to expect that they will be able to ship the ordered
4 merchandise within thirty (30) days after receipt of a Properly Completed Order. In the event
5 Defendants are unable to ship within the stated or expected time frame, Defendants shall notify
6 consumers of the delay prior to the anticipated ship date. Defendants shall also provide
7 consumers with the option of either consenting to the delay in shipping, or cancelling the order
8 and receiving a full refund of all monies paid to BlueHippo. If Defendants are unable to ship
9 the ordered merchandise by the revised ship date, then prior to the revised ship date,
10 Defendants shall provide consumers with a renewed option of either consenting to a further
11 delay in shipping, or cancelling the order and receiving a full refund. However, nothing in this
12 paragraph shall be deemed to limit or prevent Defendants from cancelling an order if
13 Defendants are unable to ship the ordered merchandise within the anticipated time frame. In
14 the event Defendants decide to cancel a consumer's order, Defendants shall notify the
15 consumer of its decision to cancel the order and provide the consumer with a full refund.

16 d. All contracts or agreements for the purchase of Covered Products shall
17 be in writing and Defendants shall provide a copy to the consumer in accordance with
18 applicable law. The Attorney General shall not bring an action against Defendants to enforce
19 this provision of the Consent Decree pursuant to Section IX of the Consent Decree if
20 Defendants provide a copy of the contract or agreement to the consumer prior to obtaining
21 more than two (2) payments from the consumer.

22 e. Failing to comply with RCW 63.14, Retail Installment Sales of Goods
23 and Services, where applicable, in connection with any retail installment contract for the sale
24 or financing of the merchandise it sells or offers to sell, including, but not limited to failure to
25 include the following in each contract: (1) the price of the merchandise purchased; (2) the
26 amount of down payment, if any; (3) the terms of repayment, including the amount of each

1 payment and the total number of payments required to pay the balance; and (4) the service
2 charge or rate of charge for credit expressed as an annual percentage rate.

3 f. Representing, expressly or by implication, that Defendants' prices for
4 Covered Products are less than or equivalent to the prices offered by the manufacturer or other
5 retailers for the same or substantially similar products unless Defendants' prices are in fact less
6 than or equivalent to the manufacturers' or other retailers' prices. Nothing herein shall prevent
7 Defendants from representing, expressly or by implication, that Defendants offer low or
8 affordable monthly layaway or credit payments to consumers in connection with their ability to
9 purchase Covered Products.

10 V. TRAINING AND COMPLIANCE

11 5.1 Defendants shall train all customer service representatives, and other employees,
12 agents or independent contractors who speak with consumers in connection with the offer for
13 sale or sale of Covered Products about the applicable compliance terms of this Consent Decree.

14 5.2 To the extent they have not done so, Defendants shall modify all currently used
15 scripts and all future scripts to comply with the terms of this Consent Decree.

16 5.3 Defendants shall implement and enforce a program reasonably designed to
17 ensure compliance with the terms of this Consent Decree.

18 VI. CONSUMER RESTITUTION AND REDRESS

19 6.1 Restitution

20 a. Within 60 days of the entry of this Consent Decree, BlueHippo shall
21 provide to any Washington consumer who has a Properly Completed Order and whose
22 merchandise has not been shipped, restitution at the consumer's option of (1) a full refund of
23 the total amount paid, including any early termination fee, (2) BlueHippo order the shipment of
24 the ordered merchandise, or substantially similar merchandise if the original merchandise is no
25 longer available, to the consumer, or (3) BlueHippo will issue the consumer a store credit at
26 one hundred and twenty-five percent (125%) of the consumer's original purchase price. Prior

1 to shipping any item, BlueHippo may require the consumer to validate their address and
2 confirm that they wish to have the item shipped to that address.

3 b. Within sixty (60) days of entry of this Consent Decree, BlueHippo shall
4 ship to any Washington consumer who has met all contractual obligations to receive free
5 merchandise the promised free item or a similar item if the original item is no longer available.
6 BlueHippo is not required to ship free items to consumers who received the merchandise they
7 purchased and subsequently stopped making all required payments to BlueHippo. Prior to
8 shipping any item, BlueHippo may require the consumer to validate that their address and
9 confirm that they wish to have the item shipped to that address.

10 c. BlueHippo shall provide a full refund of amounts paid to all FTC
11 Eligible consumers from Washington who meet all of the following criteria: (i) contact the
12 Attorney General within three (3) months after completion of the FTC redress program stating
13 that they did not receive notice pursuant to the FTC Settlement, their name was excluded from
14 the submission BlueHippo provided to the FTC, as documented by BlueHippo's records and
15 have not had their complaint resolved by BlueHippo or were not otherwise provided relief
16 under any other redress program or (ii) has qualified under any other redress program agreed to
17 by BlueHippo.

18 d. Within 30 days of the entry of this Consent Decree, BlueHippo shall
19 provide full refunds of the amounts to the consumers separately agreed to between Plaintiff and
20 the Attorney General. For purpose of this section, an offer of store credit shall not constitute a
21 refund.

22 VII. ATTORNEY'S COSTS & FEES

23 7.1 Pursuant to RCW 19.86.080, Plaintiff shall recover and Defendants shall pay the
24 costs and reasonable attorney's fees incurred by the Plaintiff in pursuing this matter in the
25 amount of \$ 25,000.00 payable within thirty (30) days after the entry of this Consent Decree. In
26 no event shall any portion of this payment be characterized as the payment of a fine, civil

1 this Consent Decree, to punish violations thereof, or to modify or clarify this Consent Decree.

2 **9.4** Representatives of the Office of the Attorney General shall be permitted to
3 access, inspect and/or copy all business records or documents under control of Defendants in
4 order to monitor compliance with this Consent Decree within 14 days of written request to
5 Defendants, provided that the inspection and copying shall be done in such a way as to avoid
6 disruption of Defendant's business activities. Said notice shall also reasonably identify the
7 documents Plaintiff seeks to inspect and copy. During the 14 day period Defendants shall have
8 the right to file a motion with this court objecting to the scope and/or reasonableness of
9 Plaintiff's request.

10 **9.5** Representatives of the Office of the Attorney General may be permitted to
11 question Defendants, or any officer, director, agent, or employee of any corporation affiliated
12 with Defendants, in deposition, pursuant to the provisions and notice requirements of CR 30, in
13 order to monitor compliance with this Consent Decree.

14 **9.6** Nothing in this Consent Decree shall be construed as to limit or bar any other
15 governmental entity or consumer from pursuing other available remedies against Defendants.

16 **9.7** Under no circumstances shall this Consent Decree or the name of the State of
17 Washington, the Office of the Attorney General, Consumer Protection Division, or any of their
18 employees or representatives be used by any Defendants named in the Complaint in connection
19 with any selling, advertising, or promotion of products or services, or as an endorsement or
20 approval of Defendants' acts, practices or conduct of business.

21 **X. GENERAL PROVISIONS**

22 **10.1** To the extent that any changes in Defendant' business, advertising, marketing
23 practices and/or disclosures are made to achieve or facilitate conformance to the terms of this
24 Settlement, such changes shall not constitute any form of evidence or admission, explicit or
25 implicit, by Defendant of any allegation alleged in the complaint.

26 **10.2** In the event the Attorney General believes that Defendants have committed a

1 violation of this Settlement and intends to file any pleading or take any other action seeking
2 sanctions (including the imposition of the suspended civil penalties) or any other relief for
3 violation of this Settlement, then the Attorney General shall first give Defendants fifteen (15)
4 business days notice (the "Notice") before filing such motion or pleading. The Notice shall be
5 sent by overnight delivery to counsel for Defendants, Clayton S. Friedman, Manatt, Phelps &
6 Phillips, LLP, 695 Town Center Drive, 14th Floor, Costa Mesa, CA 92626 and to Defendants'
7 General Counsel. The giving of such Notice shall not prevent the Attorney General from
8 bringing any such proceeding following the expiration of the fifteen (15) business day period.
9 Prior to the expiration of the fifteen (15) business day period, if Defendant so requests, a
10 representative of the Attorney General will meet during such time period with Defendant to
11 attempt to resolve any such alleged violation and provide Defendant an opportunity to cure the
12 alleged violation to the satisfaction of the Attorney General. Nothing herein shall prevent the
13 Attorney General from agreeing to provide Defendant with additional time beyond the fifteen
14 (15) business day period to respond to the Notice and cure the alleged violations.

15 **10.3** Nothing in this Settlement shall be construed as a waiver of or limitation on
16 Defendants' right to defend themselves from or make arguments in any action, state or federal
17 claim, suit or proceeding including private individual or class action claims or suits, relating to
18 the existence, subject matter or terms of this Settlement.

19 **10.4** There is no private right of action, explicit or implicit, created by this Settlement
20 to enforce the terms hereof.

21 **XI. RELEASE, DISMISSAL AND WAIVER OF CLAIMS**

22 **11.1** Upon entry of this Consent Decree, all claims in this matter, not otherwise
23 addressed by this Consent Decree are dismissed.

24 **11.2** The Attorney General acknowledges that execution of this Settlement constitutes
25 a complete settlement and release by the State of all claims, causes of action, damages, fines,
26 costs and penalties that were asserted in the complaint by the Attorney General on or prior to

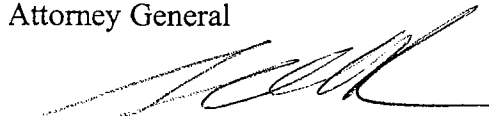
1 on or prior to the date of this Consent Decree pursuant to the Washington Consumer Protection
2 Act, RCW 19.86, the Washington Retail Installment Sales of Goods and Services, RCW 63.14
3 or other known Washington statutes against Defendants, and their past and present
4 representatives, successors, administrators, and employees, shareholders, officers, directors,
5 attorneys, agents, servants and assigns relating to or based upon the subject matter of this
6 Consent Decree. The Attorney General agrees that he shall not proceed with or institute any
7 action or proceeding in any forum against Defendant based upon or relating to any matter
8 released herein or otherwise covered by the terms of this Settlement.

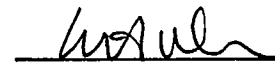
9 DONE IN OPEN COURT this _____ day FEB 06 2009, 2009.

10
11 **NANCY BRADBURN JOHNSON**
12 JUDGE/COURT COMMISSIONER

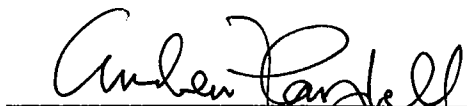
13 Approved for entry and presented by:

14 ROBERT M. MCKENNA
15 Attorney General


16 
17 SHANNON SMITH, WSBA #19077
18 Senior Counsel
19 State of Washington
20 Attorneys for Plaintiff

21 
22 SCOTT T. WILSDON, WSBA #20608
23 ATTORNEY AT LAW
24 YARMOUTH WILSDON CALF LLC
25 FOURTH & MADISON
26 925 FOURTH AVE, SUITE 2500
SEATTLE, WA 98104
ATTORNEYS FOR DEFENDANTS

Approved for Entry, Notice of Presentation
Waived:

21 
22 BLUEHIPPO FUNDING, LLC
23 Defendant, by:
24 Andrew F. Campbell

25 
26 BLUEHIPPO CAPITAL, LLC
Defendant, by Andrew F. Campbell

21 
22 CLAYTON S. FRIEDMAN
23 Attorney at Law
24 MANATT, PHELPS & PHILLIPS
25 695 Town Center Dr., 14th Floor
26 Costa Mesa, CA 92626

Attorneys for Defendants