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7 **STATE OF WASHINGTON**
8 **KING COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,

10 Plaintiff,

v.

11 BLUEHIPPO FUNDING, LLC, a Maryland
12 limited liability company, BLUEHIPPO
13 CAPITAL, LLC, a Nevada limited liability
company,

Defendants.

NO.

COMPLAINT FOR
INJUNCTIVE AND OTHER
RELIEF UNDER THE
CONSUMER PROTECTION
ACT; AND FOR INJUNCTIVE
RELIEF UNDER THE RETAIL
INSTALLMENT SALES OF
GOODS AND SERVICES ACT

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15 The Plaintiff, State of Washington, by and through its attorneys Robert M. McKenna,
16 Attorney General, and Shannon Smith, Senior Counsel, brings this action against the
17 Defendants named herein. The State alleges the following on information and belief:

18 **I. INTRODUCTION**

19 **1.1** The Plaintiff, State of Washington, brings this action pursuant to RCW 19.86,
20 the Consumer Protection Act, and RCW 63.14, the laws governing retail installment sales.
21 Plaintiff seeks a permanent injunction, and other equitable relief, including civil penalties, and
22 attorney's costs and fees, based on violations of the Consumer Protection Act.

23 **II. PLAINTIFF**

24 **2.1** The Plaintiff is the State of Washington ("State").

25 **2.2** The Attorney General is authorized to commence this action pursuant to
26 RCW 19.86.080 and RCW 19.86.140.

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III. DEFENDANTS

3.1 Defendant BlueHippo Funding, LLC, is a Maryland corporation with a principal place of business at 7000 Security Boulevard, Baltimore, Maryland, 21144, BlueHippo Funding, LLC, transacts or has transacted business in the state of Washington.

3.2 Defendant BlueHippo Capital, LLC, is a Nevada Corporation with a principal place of business at 520 E. John, Carson City, NV 89706.

IV. JURISDICTION AND VENUE

4.1 The State files this Complaint and institutes these proceedings under RCW 19.86, RCW 63.14.

4.2 The Defendants or their agents have engaged in the conduct set forth in this complaint in King County and elsewhere in the state of Washington.

4.3 Venue is proper in King County pursuant to RCW 4.12.020.

V. NATURE OF TRADE OR COMMERCE

5.1 Defendants are now, and have been at all times relevant to this lawsuit, engaged in trade or commerce within the meaning of RCW 19.86.020 through advertising, marketing, promotion, provision, and sale of computers, televisions, and other goods.

5.2 Defendants have been at all times relevant to this action in competition with others engaged in similar business in the state of Washington.

VI. FACTS

6.1 Defendants BlueHippo, LLC, and Blue Hippo Funding, LLC, (collectively, BlueHippo) market and sell a limited range of personal computers, laptop computers, computer accessories and plasma televisions in Washington and nationally, on an installment payment plan.

6.2 BlueHippo describes itself as “one of the largest and most innovative specialty merchandise lenders in the country, helping consumers get the products they want and need.” BlueHippo advertises through print media, radio, television, and the Internet. BlueHippo

1 targets its marketing and sales to consumers who have poor credit histories, BlueHippo
2 describes its sales program on its Website as follows:

3 How our program works. It's simple. Instead of checking your credit,
4 and measuring you based on your credit history, all we ask is that you
5 build a little credit history with us by paying a small, one-time initial
6 payment and 52 weeks of layaway payments. However, once you've
7 paid as agreed for just 13 consecutive weeks, we'll offer to finance* the
8 balance of your purchase price, order your computer and have it shipped
9 directly to your home.

10 (*financing not available on all products, see product for details)

11 **6.3** BlueHippo's customers are individuals with low to moderate incomes of
12 \$35,000 or less per year. BlueHippo targets consumers who are unable to obtain credit from
13 conventional sources. BlueHippo induces its target customer to purchase its products through
14 various representations, for example:

15 "Your Approval is Guaranteed! Regardless of Your Credit."

16 "Guaranteed Approval. You are guaranteed to be approved for our financing
17 programs with no credit check."

18 "We do not judge you based on your credit. In fact, you will never be turned
19 down because of your credit. You build your credit with us by making layaway
20 payments towards your purchase prior to its shipping."

21 "Guaranteed approval policy. We mean it when we say No Credit No Problem!
22 You'll be approved no matter what your credit looks like - all you need is an
23 active checking account and you'll be approved - guaranteed!"

24 **6.4** BlueHippo targets consumers by representing that it makes computers and other
25 products "affordable" and "available" to consumers regardless of their credit histories. Blue
26 Hippo charges consumers several hundred dollars more than the manufacturer's suggested or
typical retail prices for its products it sells. For example, BlueHippo charges or has charged
\$2,698.48 for an Apple iMac computer equipped with 2.16GHz Intel Core 2 Duo Processor, 1
GB hard drive, optical drive, and a 20 inch display. The same unit has been available from the
manufacturer for \$1,499.00.

1 **6.5** BlueHippo does not stock the merchandise it sells. Once a consumer's payment
2 history has satisfied BlueHippo's auditors, BlueHippo orders the product from the
3 manufacturer and the manufacturer ships the product directly to the consumer.

4 **6.6** Under BlueHippo's plan, consumers must make weekly installment payments to
5 BlueHippo. Consumers also must pay an activation fee, which typically is \$99.00. BlueHippo
6 requires payment by direct debit from the consumer's checking account. Depending on the
7 product purchased, BlueHippo will offer to finance the product after a certain period of time. If
8 the consumer's financing application is approved, BlueHippo will ship the product to the
9 consumer. Otherwise, BlueHippo will not process the order for shipment until the purchase
10 price is paid in full.

11 **6.7** BlueHippo has had various refund policies for consumers who cancel their
12 orders prior to shipment. From at least 2003 until approximately August of 2006, BlueHippo
13 would not refund any consumer payment upon cancellation, even if the consumer had made
14 substantial payments toward the total cost. In August of 2006, BlueHippo changed its policy to
15 provide refunds, less a \$175.00 cancellation fee. At some time since August of 2006,
16 BlueHippo changed its policy again and stopped providing refunds and instead provides
17 consumers with store credit to apply toward any product on the BlueHippo Website.

18 **6.8** When consumers call BlueHippo to order merchandise, BlueHippo takes the
19 consumer's personal information in order to process the order. BlueHippo obtains the
20 consumer's name, address, home telephone number, employer information, bank account
21 information, Social Security Number, and mother's maiden name. BlueHippo informs the
22 consumer that the verbal agreement to purchase the computer is "legally binding."

23 **6.9** BlueHippo will not approve consumers' merchandise for shipment if the
24 consumer is in default. BlueHippo holds consumers in default if they fail to make the minimum
25 payment when due, if they violate any terms of the installment or financing agreement with
26 BlueHippo, or if they are insolvent or in bankruptcy, if they change bank accounts, if their

1 bank returns a payment for non-sufficient funds or other reason, or if they cancel the
2 agreement.

3 **VII. FIRST CAUSE OF ACTION**
4 **Failure to Provide Merchandise to Consumers**

5 **7.1** Plaintiff realleges Paragraphs 1.1 through 6.9 and incorporates them herein as if
6 set forth in full.

7 **7.2** BlueHippo has failed to provide Washington consumers with the merchandise
8 they ordered, despite the fact that the consumers complied with all of BlueHippo's policies,
9 made scheduled payments on time, and satisfied the conditions for shipment.

10 **7.3** BlueHippo failed to provide the merchandise and failed to provide the
11 consumers with a timely refund of payments the consumers made, retaining in some cases
12 several hundred dollars of the consumers' money.

13 **7.4** The conduct described in paragraphs 7.2 through 7.3 is an unfair or deceptive
14 act or practice in trade or commerce and an unfair method of competition in violation of
15 RCW 19.86.

16 **VIII. SECOND CAUSE OF ACTION**
17 **Misrepresentations of Affordability**

18 **8.1** Plaintiff realleges Paragraphs 1.1 through 7.4 and incorporates them herein as if
19 set forth in full.

20 **8.2** BlueHippo directly or by implication misrepresents that the merchandise it sells
21 or offers for sale is affordable when its merchandise costs as much as three times the cost than
22 if the merchandise were purchased directly from the manufacturer.

23 **8.3** The conduct alleged in Paragraph 8.2 has the capacity to deceive a substantial
24 number of consumers and is an unfair or deceptive act or practice in trade or commerce and an
25 unfair method of competition in violation of RCW 19.86.
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VIII. THIRD CAUSE OF ACTION
Excessive Cancellation Fees in Violation of RCW 19.86.020

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2 **9.1** Plaintiff realleges Paragraphs 1.1 through 8.3 and incorporates them herein as if
3 set forth in full.

4 **9.2** BlueHippo imposes a cancellation penalty on consumers who cancel their
5 purchase agreements prior to shipping. This cancellation penalty has been as high as 100% of
6 all payments made to BlueHippo. BlueHippo also has charged a cancellation penalty of
7 \$175.00. BlueHippo's early cancellation fee is unfair in light of BlueHippo's knowledge of the
8 financial situation of its targeted consumers and the nature of the offer. In addition, the early
9 cancellation fee is unfair because BlueHippo does not stock the merchandise and its prices are
10 substantially higher than the manufacturer's suggested or typical retail price for the same
11 merchandise, therefore, the early termination fee does not represent recovery of a reasonable
12 amount to compensate BlueHippo for default.

13 **9.3** The conduct described in paragraphs 9.1 through 9.2 is an unfair or deceptive
14 act or practice in trade or commerce, and an unfair method of competition in violation of
15 RCW 19.86.

X. FOURTH CAUSE OF ACTION
Unreasonable Cancellation Fees in Violation of RCW 63.14.090

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18 **10.1** Plaintiff realleges Paragraphs 1.1 through 9.3 and incorporates them herein as if
19 set forth in full.

20 **10.2** BlueHippo holds consumers who fail to make any scheduled payment in
21 default. Depending on the date of default. BlueHippo has charged consumers who are in
22 default forfeit to BlueHippo all payments made toward the purchase of merchandise, or \$175.
23 This delinquency charge is excessive and therefore unreasonable.

24 **10.3** The conduct described in paragraphs 10.2 violates RCW 63.14.090 which
25 prohibits the holder of any retail installment contract, retail charge agreement, or lender credit
26 card agreement from charging an unreasonable delinquency or collection charge.

1 **IX. FIFTH CAUSE OF ACTION**
2 **Failure to Include Required Information in Retail Installment Contracts in**
3 **Violation of RCW 63.14**

4 **11.1** Plaintiff realleges Paragraphs 1.1 through 10.3 and incorporates them herein as
5 if set forth in full.

6 **11.2** When consumers agree to purchase merchandise from BlueHippo, BlueHippo
7 sends the consumer a "Shipping Verification Form" that describes the product purchased,
8 states the price of the product, and specifies that the consumer will make weekly payments
9 until the balance is paid in full. BlueHippo also sends the consumer a "Revolving Account
10 Agreement" that sets forth additional terms and conditions of the purchase, including the
11 financing details for consumers who receive their merchandise before it is paid in full.
12 BlueHippo directs the consumers to sign and return the forms.

13 **11.3** BlueHippo's forms constitute a retail installment contract as defined by
14 RCW 63.14.010.

15 **11.4** For consumers who finance merchandise from BlueHippo, BlueHippo has failed
16 to comply with RCW 63.14.060 and 63.14.040, by but not limited to, failing to state the cash
17 price of the merchandise, the amount of the consumer's down payment, the amount financed,
18 and the disclosures required by RCW 63.14.040(3).

19 **11.5** The conduct described in paragraphs 11.1 through 11.4 violates RCW 63.14.040
20 and 63.14.060, which require certain provisions in retail installment contracts.

21 **X. PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff, State of Washington, prays for relief as follows:

23 **12.1** That the Court adjudge and decree that the Defendants have engaged in the
24 conduct complained of herein.

25 **12.2** That the Court adjudge and decree that the conduct complained of constitutes
26 unfair or deceptive acts and practices and an unfair method of competition and is unlawful in
violation of the Consumer Protection Act, RCW 19.86.

