

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

**STATE OF TENNESSEE, *ex rel.*** )  
**ROBERT E. COOPER, JR.,** )  
**ATTORNEY GENERAL and** )  
**REPORTER,** )  
 )  
**Plaintiff,** )  
 )  
v. )  
 )  
**BLUEHIPPO FUNDING, LLC, a** )  
**Maryland corporation, BLUEHIPPO** )  
**CAPITAL, LLC, VIRGINIA, a** )  
**Virginia corporation, BLUEHIPPO** )  
**CAPITAL, LLC, NEVADA, a** )  
**Nevada corporation, d/b/a BLUEHIPPO,** )  
**DIGITAL BOULEVARD,** )  
**[www.bluehippo.com](http://www.bluehippo.com), [www.bigbluad.com](http://www.bigbluad.com),** )  
**and [www.approvalpc.com](http://www.approvalpc.com),** )  
**Defendants.** )

**NO. \_\_\_\_\_**  
**JURY DEMAND**

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that Defendants BlueHippo Funding LLC, BlueHippo Capital LLC, Virginia, and BlueHippo Capital LLC, Nevada, d/b/a BlueHippo, Digital Boulevard (hereafter referred to as the “BlueHippo Defendants”), hereby remove the above-entitled civil action from the Chancery Court for Shelby County, Tennessee, Thirtieth Judicial District at Memphis, to the United States District Court for the Western District of Tennessee, pursuant to 28 U.S.C. §§ 1332 and 1441, *et seq.*, and allege as follows:

**BASIS FOR JURISDICTION**

1. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a), in that complete diversity of citizenship and the required amount in

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controversy both exist in this civil action, which therefore may be removed to this Court pursuant to 28 U.S.C. § 1441(a). All defendants consent to this removal.

### **FILING OF COMPLAINT**

2. On or about October 27, 2008, Plaintiff State of Tennessee, *ex rel.* Robert E. Cooper, Jr., Attorney General and Reporter, (“Plaintiff”) filed the above-entitled civil action, bearing case number CH-08-1979-1, in the Chancery Court for Shelby County, Tennessee, Thirtieth Judicial District at Memphis. Plaintiff’s Complaint (“Complaint”) is the initial pleading setting forth the claim for relief upon which this action is based.

3. At the time it filed the Complaint, Plaintiff also filed a Motion for Temporary Injunction and Asset Freeze with a hearing date of November 19, 2008.

4. The Complaint alleges that the BlueHippo Defendants have violated the Tennessee Consumer Protection Act (“TCPA”), as well as the Tennessee Prize Statute contained therein, in connection with the sale of computers over the phone and via the internet.

5. In addition to seeking injunctive relief and civil penalties, the Complaint also seeks restitution in the amount of \$2,126,169.65, alleged to reflect collections from 4,542 consumers who engaged in commercial transactions with one of the BlueHippo Defendants and have billing addresses in Tennessee, and the issuance of orders or rendering of judgments “necessary to restore to any person who has suffered any ascertainable loss.” Complaint at ¶13 and Prayer for Relief ¶¶ 5, 8.

### **SERVICE OF SUMMONS AND COMPLAINT**

6. The BlueHippo Defendants were served by certified mail with a copy of the Summons and Complaint no earlier than October 27, 2008. Not more than thirty (30) days have passed since service of the Summons and Complaint on the BlueHippo Defendants.

### **DIVERSITY JURISDICTION**

7. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a), in that complete diversity of citizenship and the required amount in controversy both exist in this civil action.

### **CITIZENSHIP OF THE PARTIES**

8. At the commencement of this action, and at all times herein, none of the BlueHippo defendants was, or now is, a citizen of the State of Tennessee.

9. Defendant BlueHippo Funding, LLC is a Maryland limited liability company, with its principal place of business in Maryland.

10. Defendant BlueHippo Capital, LLC, Nevada is a Nevada limited liability company, with its principal place of business in Nevada.

11. Defendant BlueHippo Capital, LLC, Virginia is a Virginia limited liability company with its principal place of business in Virginia.

12. Defendant Digital Boulevard is a dissolved Nevada LLC.

13. Defendants [www.bluehippo.com](http://www.bluehippo.com); [www.bigbluead.com](http://www.bigbluead.com); and [www.approvalpc.com](http://www.approvalpc.com) are not separately incorporated entities and are operated by one or more of the BlueHippo Defendants.

14. Although a state is not a citizen for purposes of the federal diversity statute, plaintiff State of Tennessee is a nominal plaintiff only and should be disregarded for purposes of

ascertaining whether federal jurisdiction based on diversity exists. The real-plaintiffs-in-interest are the 4,542 Tennessee consumers on whose behalf the State seeks redress. At the commencement of this action, and at all times herein, the real-plaintiffs-in-interest were, and now are, citizens of the State of Tennessee.

15. Courts routinely look beyond mere labels to determine the real-parties -in-interest in deciding whether federal jurisdiction based on diversity exists. See, e.g., Certified Interested Underwriters at Lloyd's v. Layne, 26 F.3d 39, 42 (6th Cir. 1994) (“When the question is which of various parties before the court should be considered for determining whether there is complete diversity of citizenship, that question is generally answered by application of the ‘real party to the controversy’ test”) (citing Carden v. Arkoma Assocs., 494 U.S. 185, 187 n.1 (1990)). Thus, if a non-diverse party is not the real-party-in-interest and is purely a formal or nominal party, its presence may be ignored in determining jurisdiction. Id.; see also Louisiana ex rel. Caldwell v. Allstate Ins. Co., 536 F.3d 418, 428 (5th Cir. 2008).

16. This case, in substance, is a class action brought on behalf of an identifiable class of 4,542 Tennessee consumers and seeks redress on their behalf for alleged violations of the Tennessee Consumer Protection Act (“TCPA”). As the Tennessee Supreme Court made clear, “[t]he Attorney General’s power to bring actions on behalf of consumers is akin to a class action. In such actions, the remedy is not limited to injunctive relief, but rather the court may award restitution on behalf on those consumers who have suffered an ascertainable loss.” Walker v. Sunrise Pontiac-GMC Truck, Inc., 249 S.W.3d 301, 311 (Tenn. 2008). When the state undertakes to sue for the benefit of a limited number of citizens, it is not acting in its own direct interest and therefore is not the real-party-in-interest. Louisiana ex rel. Caldwell v. Allstate Ins. Co., 536 F.3d at 428, 430 (presence of request for injunctive relief insufficient to undercut

conclusion that state is not the real-party-in-interest). In seeking restitution on behalf of 4,542 Tennessee consumers, the State of Tennessee is acting on behalf of those consumers and it is the citizenship of the consumers themselves, who are the real-parties-in-interest, that matters for purposes of federal diversity.

#### **AMOUNT IN CONTROVERSY**

17. The matter in controversy in this action, exclusive of interest and costs, exceeds the jurisdictional minimum of \$75,000 set forth in 29 U.S.C. § 1332(a).

18. Accordingly, this Court has original jurisdiction under 28 U.S.C. § 1332(a), in that complete diversity of citizenship and the required amount in controversy both exist in this civil action, which may therefore be removed to this Court pursuant to 28 U.S.C. § 1441(a).

WHEREFORE, the BlueHippo Defendants file this Notice of Removal of this action from the aforesaid Chancery Court, in which it is now pending, to the United States District Court for the Western District of Tennessee. Copies of all process, pleadings, and orders received by the BlueHippo Defendants or filed with the Chancery Court are attached as Exhibit A to the Declaration of W. David Bridgers, dated November 13, 2008, which declaration hereby is attached as Exhibit 1 and incorporated herein by reference, except for exhibits which cannot be filed on the Court's ECF system and are being filed under separate cover by CD-ROM.

WHEREFORE, the BlueHippo Defendants pray that this action be removed from the Chancery Court for Shelby County, Tennessee, Thirtieth Judicial District at Memphis to the United States District Court for the Western District of Tennessee.

Respectfully submitted,

**NEAL & HARWELL, PLC**

By: s/ W. David Bridgers  
W. David Bridgers, # 016603

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*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been sent via hand-delivery to Brant Harrell and Anne Simmons, Assistant Attorneys General, Office of the Tennessee Attorney General, Consumer Advocate and Protection Division, P.O. Box 20207, Nashville, TN 37202-0207; via e-mail and U.S. Mail to William Tillner, 2<sup>nd</sup> Floor, Donnelly J. Hill Building, 170 North Main Street, Memphis, TN 38103; and via Federal Express to the Shelby County Clerk & Master, 140 Adams Avenue, Room 308, Memphis, TN 38103-2018, this the 13<sup>th</sup> of November, 2008.

s/ W. David Bridgers

**EXHIBIT 1**

**DECLARATION OF W. DAVID BRIDGERS**

I, W. David Bridgers, declare as follows:

1. I am an attorney licensed to practice in all courts in the State of Tennessee and in this Court. I am a lawyer in the law firm of Neal & Harwell PLC, counsel for Defendants in this matter. I have personal knowledge of the facts set forth in this declaration. If called as a witness, I can and will testify competently to all of these facts.

2. Attached hereto are true and correct copies of all process, pleadings, and orders received by Defendants or filed with the Chancery Court, in which it is now pending, to the United States District Court for the Western District of Tennessee. Exhibits to the Complaint (Ex. No. 19, 22, 32-37) cannot be filed on the Court's ECF system and are being filed under separate cover by CD-ROM.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed by me on November 13, 2008, in Nashville, Tennessee.

s/ W. David Bridgers  
W. David Bridgers, # 016603