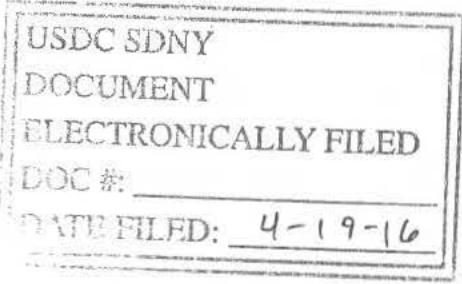


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
FEDERAL TRADE COMMISSION,  
  
                                          *Plaintiff,*  
  
                  -against-  
  
BLUEHIPPO FUNDING, LLC, et al.,  
  
                                          *Defendants.*  
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08 Civ. 1819 (PAC)

**FINAL JUDGMENT IMPOSING COMPENSATORY CONTEMPT SANCTIONS**

On July 27, 2010, the Court issued an order granting in part Plaintiff Federal Trade Commission’s (“FTC” or “Commission”) motion for contempt related to violations of a Stipulated Final Judgment and Order of Permanent Injunction (the “Consent Order”) by Defendants BlueHippo Funding, LLC and BlueHippo Capital, LLC (collectively “BlueHippo”) and Joseph K. Rensin (“Rensin”), BlueHippo’s CEO. The FTC appealed the compensatory sanctions portion of that order pertaining to BlueHippo’s failure to disclose the material terms of its refund policy. On August 12, 2014, the United States Court of Appeals for the Second Circuit vacated the damages portion of the order and remanded to this Court to determine if a presumption of consumer reliance applies to the facts of the case and for reconsideration of damages.

The parties fully briefed the remanded issues and the Court held oral argument on June 4, 2015. After full consideration of the issues, on November 6, 2015, the Court held that the presumption applies and that the FTC is entitled to a compensatory baseline of \$14,062,627.51. *See* ECF 103.

This Court then directed Rensin to proffer any evidence that would rebut the presumption and offset the baseline and to describe what discovery, if any, would be necessary to demonstrate offset. *See id.* On December 11, 2015, Rensin filed his proffer seeking offsets and discovery based on four categories of evidence. *See* ECF 107. On January 8, 2016, the FTC filed a motion *in limine* to exclude certain categories of evidence because they were unrelated to any legally-cognizable offset. ECF 120 (refiled ECF 118). After the parties fully briefed the issue, *see* ECF 124 and 126, the Court held a telephonic hearing on April 6, 2016. During that hearing, and as outlined below, all remaining issues were resolved. Accordingly, the Court found that compensatory sanctions should be awarded in the amount of \$13,400,627.60. The Court also entertained Rensin's motion regarding the administration of redress and, as outlined below, granted that motion in part and denied it in part.

The Court directed the FTC to file a proposed judgment embodying its ruling on or before April 15, 2016. Based on the record established in this case, the Court enters this Final Judgment Imposing Compensatory Contempt Sanctions pursuant to Federal Rules of Civil Procedure 52 and 58.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. This Court has jurisdiction over the subject matter of this case and each of the parties. Venue lies properly with this Court.
2. On July 27, 2010, this Court held that from April 10, 2008, through July 24, 2009, BlueHippo Funding, LLC, BlueHippo Capital, LLC, and their CEO, Joseph K. Rensin violated this Court's Stipulated Final Judgment and Order of Permanent Injunction (ECF 2) by failing to disclose all material conditions of BlueHippo's refund policy to consumers who entered Defendants' computer financing program prior to receiving

payment from them and were jointly and severally liable for consumer injury stemming from that violation. *See* ECF 76.

3. The Court found that during that time, 55,892 consumers paid BlueHippo \$14,062,627.51 in connection with orders for computers and received no merchandise from BlueHippo. ECF 76 at 4.
4. On November 6, 2015, after briefing and oral argument, this Court held that the FTC had established that: (i) the omitted terms of BlueHippo's refund policy were "of the kind usually relied upon by reasonable prudent persons"; (ii) the omissions were widely disseminated; and (iii) consumers actually purchased defendants' products. ECF 103 at 6. Accordingly, this Court held that the presumption of consumer reliance applies to Defendants' material omissions. *See* ECF 103.
5. This Court further held that BlueHippo's \$14,062,627.51 gross revenue figure was the appropriate compensatory baseline. ECF 103 at 7-8.
6. This Court then gave Rensin the opportunity to proffer what evidence he intended to offer to rebut the compensatory baseline. ECF 103 at 8.
7. On December 11, 2015, Rensin proffered four categories of rebuttal evidence:
  - (i) evidence that the baseline included orders for products other than computers;
  - (ii) evidence of monies refunded directly to consumers by BlueHippo; (iii) evidence of monies paid by Rensin to the Pennsylvania, Texas, and Wisconsin Attorneys General in settlement of related state actions, totaling \$535,000; and (iv) evidence of states where no consumers who placed store credit orders were charged sales tax or shipping and handling. *See* ECF 107.

8. The parties agreed that \$126,999.91 should be offset from the baseline to account for refunds paid directly by BlueHippo to consumers.
9. The parties also agreed that \$535,000.00 should be offset from the baseline to account for amounts paid by Rensin to settle the related state court actions.<sup>1</sup>
10. Rensin withdrew his proffered offset relating to non-computer, consumer electronic orders.
11. Rensin continued to argue that, based on such a showing that consumers in certain states were not charged shipping handling or taxes on orders using store credit, the Court could conclude that there was no possibility that consumers from those states would ever be assessed such fees, and, thus would suffer no harm from BlueHippo's failure to disclose such fees at the time consumers entered the computer financing program. ECF 107 at 7.
12. The Court finds that the evidence Rensin seeks to rely on is not generalizable to the entire pool of injured consumers. The evidence presented by the FTC demonstrates that consumers who learned of the additional fees were deterred from completing their online store transactions. *See* ECF 103 at 6-7. Thus, Rensin's evidence would not permit the Court to draw the conclusion that consumers would face no risk of being charged for the undisclosed fees. Accordingly, the evidence proffered by Rensin would not be probative of any fact affecting the offset of the compensatory baseline and is thus irrelevant. *See* Fed. R. Evid. 401. Rensin's motion to present evidence relating to the online store is, therefore, DENIED.

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<sup>1</sup> Rensin's counsel erroneously stated at the April 6, 2016 hearing that the state action settlements totaled \$550,000, and the Court repeated that erroneous amount. ECF 131 at 4. All agree that \$535,000 is the correct, agreed-upon offset for state action settlements. *See* ECF 107 at 4.

13. Because any evidence relating to online store orders is not relevant to the issues before the Court, it would not be proper to allow Rensin to take discovery on that issue. *See* Fed. R. Civ. P. 26(b)(1). Rensin's motion for discovery relating to the online store is also, therefore, DENIED.
14. Based on the \$661,999.91 the parties have agreed to offset against the compensatory baseline, the amount necessary to fully redress the harm suffered by the 55,892 consumers injured by the Defendants' contempt is \$13,400,627.60.
15. Because there are no remaining disputes of material fact to be tried between the parties, entry of judgment in the amount of \$13,400,627.60 is proper.
16. With respect to the administration of redress, Rensin argued that he should not be ordered to pay the entire compensatory sanction in a single lump sum. ECF 107 at 12-15. The FTC opposed Rensin's request on the grounds that once the Court imposes the compensatory sanction, the money belongs to consumers and Rensin should not be permitted to dissipate assets while the redress process is ongoing. *See* ECF 119.
17. The Court GRANTS IN PART and DENIES IN PART, Rensin's motion regarding the administration of redress. Although the Court will not require Rensin to pay the entire judgment at this time, Rensin should not benefit from the use of the funds while the redress process is ongoing. Thus, as outlined below, the Court will order Rensin to pay a portion of the sanction, subject to securing the remainder of the judgment through a letter of credit or bond.
18. Entry of this Final Judgment is in the public interest. There being no just reason for delay, the Clerk is directed to enter judgment immediately.

**DEFINITIONS**

1. “Defendant” means Joseph Rensin.
2. “FTC” or “Commission” means the Federal Trade Commission.
3. “Initial Redress Sum” means all sums paid pursuant to section I.B.1.
4. “Redress Fund” means any fund administered by the Commission or its designee to be used for consumer redress and any attendant expenses for the administration of any redress fund.

**ORDER**

**I. MONETARY JUDGMENT FOR COMPENSATORY CONTEMPT RELIEF**

**IT IS HEREBY ORDERED** that:

- A. Judgment is hereby entered in the amount of thirteen million, four hundred thousand, six hundred twenty-seven dollars and sixty cents (\$13,400,627.60) plus post-judgment interest in favor of the Commission against Defendant, as compensatory contempt relief.
- B. The judgment shall be satisfied as follows:
  1. Rensin is ordered to turn over the sum of eight million dollars (\$8,000,000) to the Commission to be deposited into the Redress Fund within seven (7) days of entry of this Final Judgment. Such payment must be made by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission; and
  2. Rensin must secure the balance of the judgment, five million, four hundred thousand, six hundred twenty seven dollars and sixty cents (\$5,400,627.60) as follows:

- a. By obtaining and maintaining in force a clean, irrevocable and unconditional standby letter of credit in favor of the Commission in the amount five million, four hundred thousand, six hundred twenty seven dollars and sixty cents (\$5,400,627.60), issued by a bank acceptable to the Commission, and in a form acceptable to the Commission. The letter of credit shall provide that it is automatically renewable upon expiration of the initial or any subsequent one-year period, unless the issuer provides ninety (90) days prior written notice of its election not to extend the letter of credit for an additional one-year period; or
- b. By obtaining and maintaining in force a performance bond in the principal sum of five million, four hundred thousand, six hundred twenty seven dollars and sixty cents (\$5,400,627.60) as of the date of entry of this Order, until the judgment is fully satisfied. The bond shall be conditioned upon Defendant's compliance with Section I.B of this Order. The bond shall be deemed continuous and remain in full force and effect until the ninety-first (91st) day after the judgment is paid in full. The bond shall cite this Order as the subject matter of the bond and provide surety against Defendant's failure to make any payment required under Section C of this Order. The performance bond shall be an insurance agreement providing surety and shall be issued by a surety company that is admitted to do business in each state in which

Defendant resides and that holds a Certificate of Authority issued by the U.S. Department of Treasury as acceptable surety on federal bonds and reinsuring.

c. Within 30 days of entry of this Order, Defendant shall file with the Court proof that the security required pursuant to Section I.B.2 has been obtained.

3. Upon motion of the FTC and upon proof that the Initial Redress Sum will be exhausted, Defendant shall turn over \$5,400,627.60 to the Commission to be deposited into the Redress Fund. Should the Commission complete the redress process prior to exhaustion of the Initial Redress Sum, it shall so certify to the Court within 60 days of the completion of its redress program. Upon such certification, the judgment set forth in Section A will be deemed satisfied and Rensin's obligation to maintain security as provided in Section I.B.2 shall terminate.

C. Should Defendant fail to satisfy the conditions set forth in either Section I.B.1 or Section I.B.2, he is ordered to immediately pay the full amount of the judgment (\$13,400,627.60) to the Commission to be deposited into the Redress Fund, less any payment previously made pursuant to Section I.B, plus interest computed from the date of entry of this Order. Such payment must be made by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission.

D. Within 90 days of entry of this Order, and quarterly thereafter, the FTC shall file with the Court a report regarding the status of its administration of the Redress Fund.



E. In the event that direct restitution to consumers becomes wholly or partially impracticable or money remains after redress is completed, the Commission shall so certify to the Court and provide a final report to the Court detailing its administration of the Redress Fund and identifying any undistributed amounts within 60 days after the completion of its redress program. To the extent undistributed amounts remain in the Redress Fund, the Commission shall refund such amounts to Defendant within 30 days of submitting its final report to the Court.

**II. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Final Judgment Imposing Compensatory Contempt Sanctions.

Dated: New York, New York  
April 19, 2016

SO ORDERED



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PAUL A. CROTTY  
United States District Judge