

ORDER SUMMARY – Case Number: C-19-2678

Name(s): Loyalty Funding, Inc., and Tam Thuy Nguyen

Order Number: C-19-2678-20-CO01

Effective Date: 4/3/2020

License Number: NMLS Nos. Entity:1649726, U/L Nguyen 1652531
Or NMLS Identifier [U/L]

License Effect: N/A

Not Apply Until: N/A

Not Eligible Until: N/A

Prohibition/Ban Until: N/A

Investigation Costs	\$ 2,287.68	Due by May 1, 2020	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date 4/30/2020
Fine	\$ 100,000, with \$66,500 stayed for 3 years	Due pursuant to payment plan	Paid <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date

Comments: _____

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **DIVISION OF CONSUMER SERVICES**

4 IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

No.: C-19-2678-20-CO01

CONSENT ORDER

5 LOYALTY FUNDING, INC., NMLS #1649726,
6 and TAM THUY NGUYEN, Owner and Chief
Executive Officer, NMLS #1652531,

7 Respondents.

8
9 COMES NOW the Director of the Department of Financial Institutions (Director), through
10 his designee Lucinda Fazio, Division of Consumer Services Director, Loyalty Funding, Inc.
11 (Respondent Loyalty Funding), and Tam Thuy Nguyen (Respondent Nguyen), Owner and Chief
12 Executive Officer of Loyalty Funding Inc. (Respondents), and finding that the issues raised in the
13 above-captioned matter may be economically and efficiently settled, agree to the entry of this
14 Consent Order. This Consent Order is entered pursuant to chapter 31.04 of the Revised Code of
15 Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the
16 following:

17 **AGREEMENT AND ORDER**

18 The Department of Financial Institutions, Division of Consumer Services (Department) and
19 Respondents have agreed upon a basis for resolution of the matters alleged in Statement of Charges
20 No. C-19-2678-19-SC01 (Statement of Charges), entered October 31, 2019, (copy attached hereto).
21 Pursuant to chapter 31.04 RCW, the Consumer Loan Act (Act), and RCW 34.05.060 of the
22 Administrative Procedure Act, Respondents hereby agree to the Department's entry of this Consent
23 Order and further agree that the issues raised in the above-captioned matter may be economically and
efficiently settled by entry of this Consent Order. The parties intend this Consent Order to fully

1 resolve the Statement of Charges. Respondents are agreeing not to contest the Statement of Charges
2 in consideration of the terms of this Consent Order.

3 Based upon the foregoing:

4 **A. Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter
5 of the activities discussed herein.

6 **B. Waiver of Hearing.** It is AGREED that Respondents have been informed of the right to a
7 hearing before an administrative law judge (ALJ), and hereby waive their right to a hearing and any
8 and all administrative and judicial review of the issues raised in this matter, or of the resolution
9 reached herein. Accordingly, Respondents, by their signatures and the signatures of their
10 representatives below, withdraw their appeal to the Office of Administrative Hearings (OAH).

11 **C. Remedial Affirmative Action.** It is AGREED that Respondent Loyalty Funding, its
12 officers, employees, and agents, and Respondent Nguyen, shall maintain records in compliance with
13 the Act and provide the Director with the location of the books, records and other information
14 relating to Respondent Loyalty Funding's consumer loan company business, and the name, address
15 and telephone number of the individual responsible for maintenance of such records in compliance
16 with the Act. It is FURTHER AGREED that Respondents shall retain all records related to
17 Washington borrowers, including records related to consumers who contact Respondents about
18 obtaining a loan regardless of whether that person actually obtains a loan from Respondents. This
19 includes, all records described in WAC 208-620-520, all correspondence, including emails, all
20 applications, all written disclosures required by the Act and federal laws and regulations, and all loan
21 agreements such as Promissory Notes and Deeds of Trust.

22 **D. Compliance Examination.** It is AGREED that Respondent Loyalty Funding shall be
23 subject to a full scope compliance examination, at Respondent Loyalty Funding's expense and at the

1 Department's convenience, to be completed within two years. The purpose of the examination shall
2 be to ascertain compliance with this Consent Order and compliance with the Act.

3 **E. Fine (Partially Stayed).** It is AGREED that Respondents shall pay a fine to the
4 Department in the amount of \$100,000. It is FURTHER AGREED that \$33,500 of the fine shall be
5 paid pursuant to Paragraph I. Payment of the remaining \$66,500 shall be stayed for a period of three
6 years contingent upon Respondents' compliance with this Consent Order and compliance with the
7 Act.

8 **F. Expiration of Stayed Fine.** It is AGREED that absent an action by the Department to lift
9 the stayed fine pursuant to Paragraph G, the stayed fine shall expire three years from the date of entry
10 of this Consent Order.

11 **G. Lifting of Stay and Imposition of Stayed Fine.** It is AGREED that:

- 12 1. If, during the period of the stayed fine, the Department determines Respondents have
13 not complied with this Consent Order or the Act, and the Department seeks to lift the
14 stay and impose the stayed fine, the Department will first serve Respondents with a
15 written notice of alleged noncompliance.
- 16 2. The Department's written notice of alleged noncompliance will include:
 - 17 a. A description of the alleged noncompliance;
 - 18 b. A statement that the Department seeks to lift the stay and impose the stayed fine;
 - 19 c. Notice that Respondents can contest the notice of alleged noncompliance by
20 requesting an adjudicative hearing before an ALJ from the OAH, or by
21 submitting a written response to the Department contesting the alleged
22 noncompliance; and
 - 23 d. Notice that the process for lifting the stay applies only to this Consent Order.
- 24 3. Respondents have twenty (20) days from the date of service of the notice of alleged
noncompliance to submit a written request to the Department for an adjudicative
hearing.
4. The scope and issues of the adjudicative hearing, if requested, will be limited solely
to whether or not Respondents are in violation of the terms of this Consent Order or
the Act.

1 5. At the conclusion of the adjudicative hearing, the ALJ will issue an initial decision.
2 Any party may file a Petition for Review of that initial decision with the Director of
the Department.

3 6. Default. If Respondents do not timely request an adjudicative hearing or submit a
4 written response contesting the notice of alleged noncompliance, the Department
may lift the stay and impose the stayed fine without further notice.

5 **H. Investigation Fee.** It is AGREED that Respondents shall pay to the Department an
6 investigation fee of \$2,287.68 pursuant to the terms of Paragraph I.

7 **I. Payments.** It is AGREED that Respondents shall make all payments in the form of
8 cashier's checks made payable to the "Washington State Treasurer." It is FURTHER AGREED that
9 Respondents shall pay the investigation fee of \$2,287.68 by May 1, 2020. It is FURTHER AGREED
10 that beginning on June 1, 2020, and continuing for six months, Respondents shall make monthly
11 payments of \$1,500 to the Department by the 1st day of each month. For the following twelve
12 months, Respondents shall make monthly payments of \$2,000 to the Department by the 1st day of
13 each month. Following that, Respondents shall make one last monthly payment of \$500 to the
14 Department by the 1st day of the month. Respondents may elect to pay the outstanding balance at any
15 time.

16 **J. Change of Address.** It is AGREED, that for the duration of the period this Consent
17 Order is in effect, unless otherwise agreed to in writing by the Department, Respondents shall provide
18 the Department with a mailing address and telephone number at which Respondents can be contacted
19 and Respondents shall notify the Department in writing of any changes to mailing addresses or
20 telephone numbers within fifteen days of any such change.

21 **K. Authority to Execute Order.** It is AGREED that the undersigned have represented and
22 warranted that they have the full power and right to execute this Consent Order on behalf of the
23 parties represented.

1 **L. Non-Compliance with Order.** It is AGREED that Respondents understand that failure to
2 abide by the terms and conditions of this Consent Order may result in further legal action by the
3 Director. In the event of such legal action, Respondents may be responsible to reimburse the Director
4 for the cost incurred in pursuing such action, including but not limited to, attorney fees.

5 **M. Voluntarily Entered.** It is AGREED that Respondents have voluntarily entered into this
6 Consent Order, which is effective when signed by the Director's designee.

7 **N. Completely Read, Understood, and Agreed.** It is AGREED that Respondents have read
8 this Consent Order in its entirety and fully understand and agree to all of the same.

9 **O. Counterparts.** This Consent Order may be executed by the Respondents in any number
10 of counterparts, including by facsimile or e-mail of a .pdf or similar file, each of which shall be
11 deemed to be an original, but all of which, taken together, shall constitute one and the same Consent
12 Order.

13 **RESPONDENTS:**

14 Loyalty Funding, Inc.
15 By:

16
17 /s/
18 Tam Thuy Nguyen
19 Owner and Chief Executive Officer

3-26-2020
Date

20
21 /s/
22 Tam Thuy Nguyen
23 Individually

3-26-2020
Date

24 **DO NOT WRITE BELOW THIS LINE**

1 THIS ORDER ENTERED THIS 3rd DAY OF April, 2020.

2
3 /s/
4 Lucinda Fazio, Director
5 Division of Consumer Services Department
6 of Financial Institutions

7 Presented by:

8 /s/
9 KENDALL H. FREED
10 Financial Legal Examiner

11 Approved by:

12 /s/
13 STEVEN C. SHERMAN
14 Enforcement Chief

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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

LOYALTY FUNDING, INC., NMLS #1649726,
and TAM THUY NGUYEN, Owner and Chief
Executive Officer, NMLS # 1652531,

Respondents.

No. C-19-2678-19-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENT TO ENTER AN
ORDER TO CEASE AND DESIST, REVOKE
LICENSE, PROHIBIT FROM INDUSTRY,
IMPOSE FINE, COLLECT INVESTIGATION
FEE and RECOVER COSTS AND
EXPENSES

INTRODUCTION

Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Acting Director Richard St. Onge, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents.

A. **Loyalty Funding, Inc., (Respondent Loyalty)** was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a consumer loan company on or about February 21, 2019, and continues to be licensed to date.

B. **Tam Nguyen (Respondent Nguyen)** is the Chief Executive Office and Owner of Respondent Loyalty. Nguyen has never been licensed by the Department as a mortgage loan originator.

1 **1.2 Unlicensed Consumer Loan Company Activity.** On or about February 1, 2019,
2 Respondents distributed 20,000 direct mail solicitations (Solicitations) to consumers in Washington.
3 Approximately 160 Washington consumers responded to the Solicitation by contacting Respondents
4 in February and March of 2019.

5 **1.3 Unfair, Deceptive, and Misleading Advertising Targeting Veterans.** The Solicitations
6 targeted Veterans, offered Washington veterans the opportunity to refinance residential mortgage
7 loans using the VA’s Cash-Out Refinance Loan Program, and contained multiple advertising
8 violations. The Solicitations:

- 9 A. Represent that the document is a “Final Notice” and a “Notice Regarding Your
10 Current Mortgage;”
- 10 B. Fail to identify the sender’s name on the envelope and on the front of the Solicitation;
- 11 C. Fail to state that Respondent Loyalty is not affiliated with the recipients current lender;
- 11 D. Represent that the recipients can “skip up to 2 mortgage payments;”
- 12 E. Represent that the recipients will receive a “New Debt Free Payment;”
- 12 F. Advertise a proposed monthly payment amount without disclosing what was included
13 in that payment;
- 13 G. Fail to disclose that the actual monthly payment obligation will be greater;
- 14 H. Advertise credit triggering terms without making the required additional disclosures;
- 14 I. Fail to disclose the source of the recipient’s current mortgage information;
- 15 J. Advertise a discounted rate without clearly and conspicuously disclosing that the rate
is discounted and without disclosing the cost of the discount to the borrower.

16 **1.4 Residential Mortgage Loans that Resulted from Respondents Unlicensed Activity.**

17 Respondents originated at least 11 loans as a direct result of the Solicitations that were sent to
18 Washington consumers before Respondent Loyalty was licensed by the Department.

19 **1.5 Failure to Comply with the Department’s Investigative Authority.**

20 **A. Department’s Directive.** On or about June 17, 2019, the Department sent a Directive
21 to Respondents requiring Respondents to produce a complete copy of the 11 loan files Respondents
22 identified as being originated as a direct result of the Solicitations.

23 **B. Respondents Response.** On or about July 17, 2019, Respondents produced some
24 records related to the 11 loan files and declared under penalty of perjury that all of the information

1 required by the Directive was provided, except Respondents noted it was not possible to produce
2 emails related to five of the loan files because the emails had been deleted. The records related to the
3 11 loan files were incomplete, and at a minimum failed to include any copies of required disclosures
4 signed by borrowers, failed to include copies of any closing disclosures, and failed to include any
5 copies of Promissory Notes, and Deeds of Trust.

6 **C. Department's Repeated Notice Regarding Incomplete Files.** On at least two
7 occasions since then, the Department notified Respondents that the loan files produced were not
8 complete. On or about August 27, 2019, Respondents informed the Department it did not have
9 copies of the final Closing Disclosures, Promissory Notes, and Deeds of Trusts, for the loan files, but
10 informed the Department they had requested copies. On or about August 29, 2019, Respondents
11 provided some additional documents for the loan files and stated the remaining documents would be
12 provided the following day. As of the date of this Statement of Charges, Respondents have still not
13 produced complete copies of the loan files for at least 5 of the 11 loan files.

14 **1.6 Failure to Maintain Records.** Respondents informed the Department that they did not
15 maintain records of the Closing Disclosures, Promissory Notes, or Deeds of Trusts, for the 11 loan
16 files that Respondents originated as a direct result of the Solicitations. Respondents also informed the
17 Department that they deleted email records related to 5 of the 11 loan files requested by the
18 Department.

19 **1.7 False Statements and Omissions of Material Fact.**

20 **A.** In response to the Department's investigation, on or about July 17, 2019, Respondents
21 provided a loan list with specific requested information regarding the 11 loan files. Respondents
22 declared under penalty of perjury that all the information provided was true and accurate. The
23 Department requested Respondents provide the date the borrowers first contacted Respondent
24 Loyalty in response to the Solicitation and the date the borrower submitted an application.

1 Respondents informed the Department that Borrower A¹ first contacted Respondents on March 12,
2 2019, and that Borrower A submitted an application on the same day. This information was false, as
3 initial disclosures in the file were signed by the borrower and the mortgage loan originator on March
4 2, 2019, and the borrower faxed documents to Respondents on March 5, 2019. Other documents in
5 the loan file also show there was an additional loan number assigned to the same borrower and
6 another application for this borrower dated March 2, 2019.

7 **1.8 On-Going Investigation.** The Department's investigation into the alleged violations of the
8 Act by Respondents continues to date.

9 II. GROUNDS FOR ENTRY OF ORDER

10 **2.1 Unlicensed Consumer Loan Company Activity.** Based on the Factual Allegations set forth
11 in Section I above, Respondents are in apparent violation of RCW 31.04.035(1) for offering to make
12 or making residential mortgage loans without first obtaining and maintaining a license.

13 **2.2 Unfair or Deceptive Advertising.** Based on the Factual Allegations set forth in Section I
14 above, Respondents are in apparent violation of RCW 31.04.027(1)(b) for directly or indirectly
15 engaging in any unfair or deceptive practice toward any person, and WAC 208-620-550(5), and
16 WAC 208-620-630(7) by using an advertisement that included information about a borrower's
17 current loan that Respondent did not obtain from a solicitation, application, or loan, without
18 providing the borrower with the name of the source of the information

19 **2.3 False, Misleading, or Deceptive Statements or Representations Regarding Financing**
20 **Terms or Conditions.** Based on the Factual Allegations set forth in Section I, Respondents are in
21 apparent violation of RCW 31.04.027(1)(g), RCW 31.04.135, and WAC 208-620-630(9) for
22 advertising, in any manner whatsoever, any statement or representation with regard to the rates,
23

24 ¹ See Appendix A for the borrowers name and loan number.

1 terms, or conditions for the lending of money that is false, misleading, or deceptive, and by being in
2 apparent violation of WAC 208-620-550(22).

3 **2.4 Violations of Applicable Federal Law and Regulations.** Based on the Factual Allegations
4 set forth in Section I, Respondents are in apparent violation of RCW 31.04.027(1)(m) and WAC 208-
5 620-640 for violating any applicable federal laws relating to the activities governed by the Act,
6 including those contained in the Federal Trade Commissions Act, 15 U.S.C. §§ 41-58; the Truth in
7 Lending Act, 15 U.S.C. §1601 *et seq.* and Regulation Z, 12 C.F.R. Part 1026; and the Mortgage Acts
8 and Practices – Advertising (MAP) rule, Regulation N, 12 C.F.R. Part 1014.

9 **2.5 Failed to Comply with the Department’s Investigation Authority.** Based on the Factual
10 Allegations set forth in Section I above, Respondents are in apparent violation of RCW 31.04.145(1)
11 and WAC 208-620-550(14) for failing to completely comply with a Directive issued by the Director.

12 **2.6 Failed to Maintain Adequate Records.** Based on the Factual Allegations set forth in
13 Section I above, Respondents are in apparent violation of RCW 31.04.155 and WAC 208-620-520 for
14 failing to maintain the books, accounts, records, papers, documents, files, and other information
15 relevant to a loan or servicing of a loan for a minimum of twenty-five months, or the period of time
16 required by federal law, whichever is longer, after making the final entry on that loan at a licensed
17 location.

18 **2.7 False Statement to the Department.** Based on the Factual Allegations set forth in Section I
19 above, Respondents are in apparent violation of RCW 31.04.027(1)(h) and WAC 208-620-550(6) for
20 negligently making any false statement or knowingly and willfully making any omission of material
21 fact in connection with an investigation conducted by the Department.

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1 **III. AUTHORITY TO IMPOSE SANCTIONS**

2 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 31.04.093(5)(a), the
3 Director may issue orders directing a licensee, its employee, loan originator, or other person subject
4 to the Act to cease and desist from conducting business in a manner that is injurious to the public or
5 violates any provision of the Act.

6 **3.2 Authority to Revoke License.** Pursuant to RCW 31.04.093(3) and (b), the Director may
7 revoke a license for failure to comply with any specific order or demand, or failure to comply with
8 any directive, order, or subpoena issued by the Director under the Act.

9 **3.3 Authority to Prohibit from the Industry.** Pursuant to RCW 31.04.093(6), the Director may
10 issue an order prohibiting from participation in the affairs of any licensee, any officer, principal,
11 employee, mortgage loan originator, or any other person subject to the Act for failure to comply with
12 any order or subpoena issued under this chapter, or for a violation of RCW 31.04.027, RCW
13 31.04.155, or RCW 31.04.221, or for failure to obtain a license for activity that requires a license.

14 **3.4 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of
15 up to one hundred dollars per day, per violation, upon the licensee, its employee or loan originator, or
16 any other person subject to the Act for any violation of the Act or failure to comply with any order or
17 subpoena issued by the Director under the Act.

18 **3.5 Authority to and Investigation Fee.** Pursuant to RCW 31.04.145(3) and WAC 208-620-
19 590, WAC 208-620-610(7), every licensee examined or investigated by the Director or the Director's
20 designee shall pay for the cost of the investigation, calculated at the rate of \$69.01 per staff hour
21 devoted to the examination or investigation, and shall pay travel costs if the licensee maintains its
22 records outside the state.

23 **3.6 Authority to Recover Costs and Expenses.** Pursuant to RCW 31.04.205(2), the Director
24 may recover the state's costs and expenses for prosecuting violations of the Act.

1 **IV. NOTICE OF INTENT TO ENTER ORDER**

2 Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC,
3 as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose
4 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, RCW
5 34.04.202, and RCW 31.04.205. Therefore, it is the Director's intent to ORDER that:

6 **4.1** Respondents Loyalty Funding, Inc. and Tam Thuy Nguyen cease and desist from
7 engaging in all conduct in violation of the Act, including engaging in false, deceptive,
8 or misleading advertising.

9 **4.2** Respondent Loyalty Funding, Inc.'s license to conduct the business of a
10 consumer loan company be revoked.

11 **4.3** Respondents Loyalty Funding, Inc. and Tam Thuy Nguyen be prohibited from
12 participation in the conduct of the affairs of any consumer loan company subject to
13 licensure by the Director, in any manner, for a period of seven years.

14 **4.4** Respondents Loyalty Funding, Inc. and Tam Thuy Nguyen jointly and severally pay a
15 fine. As of the date of this Statement of Charges, the fine totals \$200,000.

16 **4.5** Respondents Loyalty Funding, Inc. and Tam Thuy Nguyen jointly and severally pay
17 an investigation fee. As of the date of this Statement of Charges, the investigation fee
18 totals \$2,287.68.

19 **4.6** Respondents Loyalty Funding, Inc. and Tam Thuy Nguyen maintain records in
20 compliance with the Act and provide the Department with the location of the books,
21 records and other information relating to Respondent Loyalty Funding Inc.'s
22 consumer loan business, and the name, address and telephone number of the
23 individual responsible for maintenance of such records in compliance with the Act.

24 **4.7** Respondents Loyalty Funding, Inc. and Tam Thuy Nguyen pay the Department's costs
and expenses for prosecuting violations of the Act in an amount to be determined at
hearing or by declaration with supporting documentation in event of default by
Respondent.

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1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist, Revoke
3 Licenses, Prohibit from Industry, Impose Fine, Collect Investigation Fee, and Recover Costs and
4 Expenses of Prosecution (Statement of Charges) is entered pursuant to the provisions of RCW
5 31.04.093, RCW 31.04.165, RCW 31.04.202, and RCW 31.04.205, and is subject to the provisions of
6 chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written request
7 for a hearing as set forth in the NOTICE OF OPPORTUNITY FOR ADJUDICATIVE HEARING
8 AND TO DEFEND accompanying this Statement of Charges.

9 Dated this 31st day of October, 2019.

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11
12 /s/
13 RICHARD ST. ONGE
14 Acting Director
15 Division of Consumer Services
16 Department of Financial Institutions

17 Presented by:

18 /s/
19 KENDALL H. FREED
20 Financial Legal Examiner

21 Approved by:

22 /s/
23 STEVEN C. SHERMAN
24 Enforcement Chief