

ORDER SUMMARY – Case Number: C-18-2383

Respondents:	American Financial Network, Inc. (AFN) John Robert Sherman III, individually and as President of AFN
Order Number:	C-18-2383-21-CO02
Effective Date:	December 30, 2021
NMLS Numbers:	AFN – NMLS No. 237341 John Robert Sherman, III – NMLS No. 238680
Admissions:	Respondent AFN admitted that its failure to maintain adequate compliance policies, procedures, and testing systems contributed to the advertising violations of the Consumer Loan Act (Act) as alleged in the attached Statement of Charges (Charges).
Cease and Desist:	Respondents AFN and John Robert Sherman III (Respondents) agreed and were ordered to cease and desist the conduct alleged in the Charges to be in violation of the Act.
Future Compliance:	Respondents further agreed and were ordered to comply with state and federal advertising statutes and regulations when advertising in Washington.
License Effect:	AFN’s consumer loan company license was revoked, with the revocation stayed for two (2) years contingent upon Respondents’ future compliance with the Act, this Order, and a Compliance Examination to be conducted within 18 months of the entry of this Order.
Fines:	\$200,000, with ½ paid, and ½ stayed for two (2) years contingent upon future compliance with the Act, this Order, and a Compliance Examination. The \$100,000 paid fine was paid in full on December 29, 2021.
Investigation Fee:	\$ 12,000, with the entire amount due with the fully executed Order. The \$12,000 investigation fee was paid in full on December 29, 2021.

Please notify the Examinations Unit that a full-scope compliance examination of Respondent AFN is due within 18 months of the entry of this Order. In addition to the regular examination, Respondent AFN has agreed to a “detailed review of Respondent AFN’s new advertising compliance policies and procedures; a review of no less than six months of Respondents’ Washington advertising, including all Internet advertising; and a review of Respondent AFN’s test results of its advertising for compliance with state and federal advertising statutes and regulations.”

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

4 IN THE MATTER OF DETERMINING
Whether there have been violations of the
Consumer Loan Act of Washington by:

No. C-18-2383-21-CO02

CONSENT ORDER

5 AMERICAN FINANCIAL NETWORK, INC.,
NMLS #237341, and
6 JOHN ROBERT SHERMAN III, President and
Mortgage Loan Originator, NMLS #238680,

7 Respondents.
8

9 COMES NOW the Director of the Department of Financial Institutions (Director), through his
10 designee Lucinda Fazio, Division of Consumer Services Director, and American Financial Network
11 Inc. (Respondent AFN) and John Robert Sherman III, President of Respondent AFN (Respondent
12 Sherman) (collectively, Respondents), and finding that the issues raised in the above-captioned matter
13 may be economically and efficiently settled, agree to the entry of this Consent Order (Order). The
14 Department enters this Order pursuant to chapter 31.04 of the Revised Code of Washington (RCW),
15 and RCW 34.05.060 of the Administrative Procedure Act (APA), based on the following:

16 **AGREEMENT AND ORDER**

17 The Department of Financial Institutions, Division of Consumer Services (Department) and
18 Respondents have agreed on a basis for resolution of the matters alleged in the attached Statement of
19 Charges No. C-18-2383-21-SC02 (Charges), entered 27 September 2021. Pursuant to chapter 31.04
20 RCW, the Consumer Loan Act (Act), and RCW 34.05.060 of the APA, Respondents hereby agree to
21 the Department's entry of this Consent Order, which the parties intend to fully resolve the Charges.

22 **Based upon the foregoing:**

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

1 **B. Waiver of Hearing.** It is AGREED that Respondents have been informed of the right to a
2 hearing before an administrative law judge, and hereby waive their right to a hearing and any and all
3 administrative and judicial review of the issues raised in this matter, or of the resolution reached herein.
4 Accordingly, Respondents withdraw their appeal to the Office of Administrative Hearings.

5 **C. Admission.** It is AGREED that Respondent AFN admits that its failure to maintain adequate
6 advertising compliance policies, procedures, and testing systems contributed to the advertising
7 violations of the Act as alleged in the Charges. With the exceptions of that admission, Respondents
8 neither admit nor deny the allegations contained in the Charges, will not take any action, nor make or
9 permit to be made any public statement creating the impression that this Order is without factual basis;
10 and that nothing in this paragraph affects Respondents' rights to take legal or factual positions in
11 defense of litigation.

12 **D. Cease and Desist.** It is AGREED and ORDERED that Respondents shall cease and desist all
13 conduct alleged in the Charges to be in violation of the Act. It is FURTHER AGREED and ORDERED
14 that Respondents shall henceforth comply with state and federal advertising statutes and regulations
15 when advertising in Washington, including regulations relating to HECM and VA loan advertising.

16 **E. Representations and Warranties.** It is AGREED that Respondents have represented and
17 warranted to the Department that Respondent AFN has begun revising its advertising compliance
18 policies and procedures to detect and prevent future advertising violations, including those specific
19 advertising violations alleged in the Charges, and that as part of those policies and procedures,
20 Respondent AFN will include regular testing of its advertising for compliance with state and federal
21 advertising statutes and regulations, including compliance with HECM and VA advertising rules.

22 **F. Affirmative Action.** It is AGREED and ORDERED that Respondents shall, within thirty (30)
23 day of entry of this Order, produce to the Department an answer to Request for Explanation No. 1 in
24 *Subpoena Duces Tecum to Provide Explanation and Documents*, number C-18-2383-18-SB01, issued

1 by the Department and served on Respondents on March 28, 2018. It is FURTHER AGREED and
2 ORDERED that Respondents shall include with their response copies of all advertising records
3 maintained by Respondent AFN pursuant to WAC 208-620-520(2) from July 1, 2021, to September 30,
4 2021, including but not limited to:

- 5 1. All direct mail solicitations delivered to Washington consumers, including all envelopes;
- 6 2. All commercial communications relating to reverse or HECM loans; and
- 7 3. All commercial communications relating to FHA and VA loans.

8 **G. Revocation of Consumer Loan Company License (Stayed).** It is AGREED that Respondent
9 AFN's consumer loan company license is revoked. It is FURTHER AGREED and ORDERED that the
10 license revocation is stayed for two (2) years contingent on Respondents' future compliance with the
11 Act, this Order, and a Compliance Examination as detailed in Paragraph J.

12 **H. Fine (Partially Stayed).** It is AGREED that Respondents are jointly and severally liable to
13 the Department for a fine of \$200,000. It is FURTHER AGREED and ORDERED that payment of
14 \$100,000 of the fine (the Paid Fine) shall be paid pursuant to the Payment section below, and that
15 \$100,000 of the fine (the Stayed Fine) shall be stayed for two years contingent on Respondents' future
16 compliance with the Act, this Order, and a compliance examination as detailed in Paragraph J.

17 **I. Investigation Fee.** It is AGREED and ORDERED that Respondent shall pay to the
18 Department an investigation fee of \$12,000. Payment of the fine shall be pursuant to the Payment
19 section below.

20 **J. Payment.** It is AGREED and ORDERED that with delivery of this Order to the Department,
21 properly dated and signed, Respondents shall pay the \$100,000 fine, and the \$12,000 investigation fee,
22 in the form of a \$112,000 cashier's check made payable to the "Washington State Treasurer."

23 **K. Compliance Examination.** It is AGREED and ORDERED that within 18 months of the
24 entry of this Order, the Department will conduct a full-scope compliance examination of Respondent

1 AFN at Respondents' cost and the Department's convenience. The examination will include a detailed
2 review of Respondent AFN's new advertising compliance policies and procedures; a review of no less
3 than six-months of Respondents' Washington advertising, including all Internet advertising; and a
4 review of Respondent AFN's test results of its advertising for compliance with state and federal
5 advertising statutes and regulations. It is FURTHER AGREED and ORDERED that:

- 6 1. An examination risk rating of one (1) or two (2) **will** result in the stayed license revocation
7 and stayed fine (the Stayed Sanctions) expiring without further notice or action by the
8 Department, and they will not be imposed.
- 9 2. An examination risk rating of three (3) **may** result in the Department lifting the stays and
10 imposing the Stayed Sanctions pursuant to Paragraph L, and may result in the imposition of
11 other sanctions necessary for the enforcement of the Act and protection of the public.
- 12 3. An examination risk rating of four (4) or five (5) **will** result in the Department lifting the
13 stays and imposing the Stayed Sanctions pursuant to Paragraph L, and may result in the
14 imposition of other sanctions necessary for the enforcement of the Act and protection of the
15 public.
- 16 4. Regardless of the assigned risk rating, Respondents must respond to and address all findings
17 in the Report of Examination, and timely pay the invoice. Failure to timely pay the invoice
18 from this compliance examination is a breach of this Order.

19 **L. Lifting of Stays and Imposition of Stayed Sanctions.** It is AGREED and ORDERED that:

- 20 1. If during the two-year stay the Department determines Respondents have not complied
21 with the Act and related rules, have not complied with the terms of this Order, or if
22 Respondent AFN receives an examination risk rating of three (3), four (4), or five (5), and
23 the Department seeks to lift the stays and impose any or all of the Stayed Sanctions, the
24 Department will first serve Respondents with a written notice of alleged noncompliance.
2. The notice of noncompliance will include:
 - a. A description of the alleged noncompliance;
 - b. A statement that the Department seeks to lift any or all of the stays and impose any or
all of the Stayed Sanctions;
 - c. Notice that Respondents can contest the notice of alleged noncompliance by
requesting an adjudicative hearing before an Administrative Law Judge (ALJ) from
the Office of Administrative Hearings (OAH); and
 - d. Notice that the hearing applies only to violations of this Order.
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 are limited solely to whether or not Respondents are in violation of the Act, this Order, or that Respondent AFN received an examination risk rating of three (3), four (4), or five (5).
5. At the conclusion of the adjudicative hearing the ALJ will issue an initial decision. Either party may file a Petition for Review of that initial decision with the Director of the Department.
6. **WARNING.** If any Respondent does not timely request an adjudicative hearing, that Respondent will be in default. As to that Respondent, the Department may lift any or all of the stays and impose any or all of the Stayed Sanctions without further notice.

M. Authority to Execute Order. It is AGREED that Respondent Sherman has represented and warranted that he has the full power and right to execute this Order on behalf of Respondent AFN.

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

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

P. Completely Read, Understood, and Agreed. It is AGREED that Respondent Sherman has read this Order in its entirety and fully understand and agrees to all of the same both individually and as the authorized representative of Respondent AFN.

RESPONDENT:
American Financial Network, Inc.
 By:

RESPONDENT:
John Robert Sherman
 By:

 /s/
 John Robert Sherman, President
 American Financial Network, Inc.

 /s/
 John Robert Sherman
 Individually

December 13, 2021
 Date Signed

December 13, 2021
 Date Signed

1 THIS ORDER ENTERED THIS 30th DAY OF December, 2021.

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

7 Presented by:

Approved by:

8 _____ /s/
9 ANTHONY W. CARTER
10 Senior Legal Examiner
11 Consumer Services Enforcement Unit
12 Department of Financial Institutions

_____ /s/
JACK McCLELLAN
Enforcement Chief
Consumer Services Enforcement Unit
Department of Financial Institutions

**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:

AMERICAN FINANCIAL NETWORK, INC.,
NMLS No. 237341, and
JOHN ROBERT SHERMAN III, CEO,
NMLS No. 238680,

Respondents.

No. C-18-2383-21-SC02

STATEMENT OF CHARGES and NOTICE OF INTENT TO
ENTER AN ORDER TO REVOKE LICENSE, PROHIBIT
FROM INDUSTRY, IMPOSE FINES, COLLECT
INVESTIGATION FEES, and RECOVER COSTS AND
EXPENSES OF PROSECUTION

INTRODUCTION

Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Washington State Department of Financial Institutions (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act).¹ Having conducted an investigation pursuant to RCW 31.04.145, and based on the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Lucinda Fazio, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents and Licensure.

A. Respondent American Financial Network, Inc. (Respondent AFN). The Washington State Department of Financial Institutions (Department) licensed Respondent AFN to conduct business under the Act on July 20, 2011. Respondent AFN has timely renewed its consumer loan license with the Department and remains licensed to conduct business under the Act through 2021.

B. Respondent John Robert Sherman III (Respondent Sherman). The Chief Executive Officer of Respondent AFN since November 2020, the Department has never licensed Respondent Sherman. Respondent Sherman was previously the President of Respondent AFN, from April 2012 through October 2020, and prior to that was the Chief Operating Officer of Respondent AFN from June 2001 through March 2012.

¹ The Act was amended effective June 7, 2018. The only amendments relevant to this Statement of Charges were numerical changes to the provisions of RCW 31.04.027. When cited, the Department cites the former version as RCW 31.04.027 (2015), and the current version as RCW 31.04.027 (2018).

1 **1.2 2013 Complaint and Notice.** On April 25, 2013, the Department received a complaint involving a direct
2 mail solicitation distributed in Washington by Respondent AFN. The solicitation offered recipients an opportunity
3 to refinance their residential mortgage loans at a lower interest rate. On May 8, 2013, the Department served
4 Respondent AFN with a Directive to Provide Documents and Explanations (Directive) related to the solicitation,
5 and on May 23, 2013, received a response from Respondent AFN. In its reply, Respondent AFN advised it had
6 distributed approximately 500 copies of the solicitation to Washington consumers.

7 On July 30, 2013, the Department served Respondent AFN with a Resolution and Closure letter, which noted
8 that based on the Department's investigation, Respondent AFN violated RCW 31.04.027(12) (2015) for violating
9 an applicable federal statute relating to the activities governed by the Act. The letter also noted that Respondent
10 AFN violated WAC 208-620-630(1) for advertising with envelopes or stationery that contained official-looking
11 emblems designed to resemble a government mailing or suggest an affiliation that does not exist.

12 The Department's Resolution and Closure letter put Respondent AFN on notice that the Act requires
13 compliance with the Truth in Lending Act (TILA), which requires clear and conspicuous disclosure of credit terms.
14 The letter further notified Respondent AFN that the Act prohibits advertising using envelopes with official-looking
15 emblems, crests, or seals that resemble those used by any state or federal government agency. Finally, the letter
16 notified Respondent AFN that the Department expected Respondent AFN to implement a system of controls
17 designed to prevent future violations of, and ensure future compliance with, the Act.

18 **1.3 Prior State Regulatory Actions.** Respondent AFN has been subject to three state regulatory actions
19 involving advertising violations.

20 **A. Utah Stipulation and Order.** On or about June 2, 2021, the Utah Division of Real Estate (Utah DRE)
21 entered into a Stipulation and Order with Respondent AFN resolving allegations that Respondent AFN had
engaged in three instances of false or misleading advertising in 2017, 2018, and 2020.

22 **i. Reverse Mortgage Solicitation #1:** In or around August 2017, Respondent AFN sent a direct mail
23 solicitation to Utah residents relating to refinancing Home Equity Conversion Mortgage (HECM) loans.
24 Without citing a source, the solicitation claimed that "dramatic changes" had been made to the HECM
25 loan program and that by refinancing their loans recipients might be entitled to get more cash and obtain
26 a lower interest rate. The solicitation also including a warning that the offer "was only valid through
October 9, 2017," a claim Utah DRE specifically found to create an undue sense of urgency.

Utah DRE concluded, and Respondent AFN admitted, that the solicitation was false or misleading with
respect to failing to cite the source of the purported "dramatic changes."

1 **ii. Veterans Administration (VA) Solicitation:** In or around December 2018, Respondent AFN sent a
2 direct mail solicitation to Utah residents relating to refinancing VA mortgage loans. The solicitation
3 claimed recipients might be entitled to additional cash and a lower payment, and claimed that a review
4 had revealed the recipients had not accessed their loan benefits. The solicitation also urged recipients to
5 call before December 28, 2018, to speak with a “Veterans Administration Program Customer Support
6 Representative.”

Utah DRE concluded, and Respondent AFN admitted, that the solicitation was false or misleading with
respect to the suggestion the VA, rather than Respondent AFN, had sent the solicitation, and that there
was no indication the solicitation was a solicitation for residential mortgage lending services.

7 **iii. Reverse Mortgage Solicitation #2:** On or about March 16, 2020, Respondent AFN sent a direct mail
8 solicitation to Utah residents relating to purported changes to the HECM loan program. The solicitation
9 claimed HUD Secretary Ben Carson had submitted a memorandum proposing to “eliminate HECM to
10 HECM transactions as promptly as is practical.” The solicitation warned recipients that once in place, the
11 change would mean tens of thousands of existing HECM borrowers would lose their ability to get more
12 cash, to decrease their interest rate, and/or to decrease their mortgage insurance premiums. The
13 solicitation stressed that HUD could implement the proposed change with little or no warning, and that
14 therefor recipients needed to call Respondent AFN immediately. Respondent AFN never substantiated
15 the claim regarding HUD Secretary Ben Carson, and Utah DRE concluded that Respondent AFN
16 designed the solicitation to elicit immediate calls from consumers out of fear of losing certain benefits.

Utah DRE concluded, and Respondent AFN admitted, that the solicitation was false or misleading to
the extent it implied the proposed changes were imminent and came from an official source.

17 **B. Virginia Commissioner of Financial Institutions.** The Virginia Commissioner of Financial Institutions
18 (Virginia CFI) entered into two separate Consent Orders with Respondent AFN, both involving advertising
19 violations.

- 20 **i.** On March 13, 2019, the Virginia CFI accepted in settlement a \$2,500 civil penalty resolving allegations
21 that Respondent AFN had violated the mortgage broker advertising prohibitions of the Virginia
22 Administrative Code (VAC). The violations involved advertising preapproved mortgage loans without
23 clearly and conspicuously disclosing the conditions and/or qualifications associated with such
24 preapproval.
- 25 **ii.** On August 15, 2016, the Virginia CFI accepted in settlement a \$10,000 civil penalty resolving
26 allegations that Respondent AFN had violated, in part, the advertising prohibitions of the VAC. The
violations involved failing to clearly and conspicuously disclose NMLS ID numbers on advertising, and,
when advertising or implying that a consumer can reduce a monthly payment by refinancing a current
loan, failing to clearly and conspicuously disclose that by refinancing the existing mortgage loan, the
consumer’s total finance charges may be higher over the life of the loan.

27 **1.4 2017 Compliance Examination and Notice.** During September 2017, the Department conducted a
28 compliance examination of Respondent AFN. The Department issued a Report of Examination (ROE) citing one
29 violation of federal advertising laws and regulations, TILA and Regulation Z. The violations involved three e-mail
30 solicitations sent to Washington consumers that disclosed the term of advertised loans (15 or 30 years), but failed
31 to make the additional credit disclosures required by TILA and Regulation Z. The ROE noted that Respondent

1 AFN “must improve current business practices in order to come into compliance with the Act and applicable
2 federal laws and regulations,” and “is expected to review Regulation Z to ensure all advertisements” are compliant.

3 **1.5 2017 HECM Advertising.** On October 24, 2017, the Department received a complaint from Washington
4 consumer BRR.² She alleged that during 2017 she received more than five direct mail solicitations from
5 Respondent AFN offering to refinance her existing Home Equity Conversion Mortgage (HECM) loan. Almost all
6 of Respondents’ HECM solicitations exhorted recipients to CALL US TODAY!, or **Call now**, or *Don’t get left*
7 *behind – Call today*. In a solicitation captioned “**ANNOUNCEMENT 8/29/2017: IMPORTANT CHANGES**
8 **COMING TO REVERSE MORTGAGES**,” the solicitation referenced rule changes made by HUD Secretary Ben
9 Carson to the HECM loan program that would result in less cash and increased fees, warning that:

10 **These changes will be effective October 2, 2017 – This is probably the final**
11 **chance you will ever have to get better terms on your reverse mortgage**

and

To Qualify for the Maximum Cash Available, You Must Act Now

P.S. Tens of thousands of seniors will lose access to restructuring their reverse
12 mortgage after 10/2/2017. ... *Don’t get left behind – call today*

13
14 On November 2, 2017, the Department served a Directive on Respondent AFN seeking explanations and
15 documents responsive to BRR’s allegations. The response to the Directive was due November 27, 2017. When
16 Respondent AFN failed to timely comply with the Directive, on December 28, 2017, the Department served a
17 warning on Respondent AFN noting that (1), response to the Directive was not optional; (2), the Department must
18 receive the response by January 12, 2018; and (3), failure to timely comply would subject Respondent AFN to
19 potential enforcement action.

20 On January 12, 2018, the Department received the response to the Directive, but it was incomplete. In
21 addition to claiming that it could not locate any of the HECM solicitations sent to BRR, Respondent AFN failed
22 produce a copy of the requested conversation/activity log.

23 **1.6 2018 Advertising Investigation.** The Department subsequently opened an advertising investigation into
24 Respondent AFN. On March 28, 2018, the Department served a Subpoena *Duces Tecum* to Provide Explanations

25
26 _____
² The Department has omitted the full name of consumer BRR to protect her privacy.

1 and Documents (Subpoena) on Respondents. The Subpoena sought specific information related to Respondent
2 AFN's advertising and business practices from January 1, 2017, through March 28, 2018, and included samples of
3 HECM solicitations sent by Respondents to Washington consumers. The response to the Subpoena was due no
4 later than 5:00 p.m. on Monday, April 23, 2018, subsequently extended one week to Monday, April 30, 2018.

5 On May 1, 2018, the Department received Respondents' response to the investigative Subpoena, which was
6 incomplete. For example, rather than answering the Department's Request to Provide Explanations No. 1,
7 Respondents altered the request and then answered their preferred request. The Department's Request to Provide
8 Explanations No. 1:

- 9 **1.** Provide a detailed written explanation relating to American Financial's use of solicitations in
10 Washington. In responding to this request, provide with American Financial's explanation
11 information relating to the process American Financial uses to submit, review, correct, edit, and
12 approve solicitations for compliance with applicable State and Federal laws and regulations in
13 Washington. In addition:
- 14 a. Identify each of the solicitations sent or delivered to Washington consumers by a unique
15 number or title to differentiate between the solicitations;
 - 16 b. Identify the natural person(s) who conducted the review, correction, edit, and approval of the
17 solicitations prior to distribution in Washington;
 - 18 c. Provide the starting and ending dates each solicitation was sent or delivered to Washington
19 consumers;
 - 20 d. Provide the number of each solicitation sent or delivered to Washington consumers;
 - 21 e. Provide the number of Washington consumers who responded to each of the solicitations; and
 - 22 f. Provide the number of Washington consumers who applied for residential mortgage loans in
23 response to each of the solicitations.

24 Respondents' altered Request to Provide Explanations No. 1:

- 25 **1.** Provide a detailed written explanation *for any other advertising or commercial communications sent*
26 *or distributed in Washington State by American Financial branches or mortgage loan originators*
not licensed to offer or make residential mortgage loans in Washington. (Emphasis added.)

27 Respondents' alteration severely limited the request, and completely omitted sub-parts a through f. Respondents'
28 answer to their preferred question was predictable:

29 *To the best of AFN's knowledge, and after a reasonable search and diligent inquiry, no AFN branches or*
30 *mortgage loan originators, who were not licensed in Washington to make residential loans, sent or*
31 *distributed advertising or communications in Washington State or to Washington consumers.*

32 **1.7 2019 VA Loan Advertising Sweep.** During 2019, the Department conducted a review of VA loan
33 advertising practices by mortgage lenders licensed in Washington. On August 9, 2019, the Department served a

1 subpoena to Respondent AFN seeking copies of all VA loan direct mail advertising sent between January 1, 2018,
2 and August 9, 2019. On September 6, 2019, Respondent AFN timely produced 32 direct mail solicitations offering
3 Interest Rate Reduction Refinancing Loans (IRRRL) and other VA residential mortgage refinance loans that
4 Respondents had distributed in Washington. Almost all of Respondents' VA solicitations exhorted recipients to
5 ****CALL IMMEDIATELY****, and/or referred to the solicitation as a **TIME SENSITIVE NOTICE**.

6 **1.8** During the course of the investigation, the Department received approximately eight additional advertising
7 complaints against Respondent AFN. Two complaints involved direct mail solicitations offering Mortgage
8 Insurance Premium (MIP) reduction refinance loans on existing FHA mortgage loans and cash-out refinances on
9 existing residential mortgage loans. Both claimed that to reduce or eliminate MIP the recipient would be required to
10 obtain a new mortgage through Respondents.

11 **II. GROUNDS FOR ENTRY OF ORDER**

12 **2.1 Unfair or Deceptive Advertising.** Based on the Factual Allegations set forth in Section I above,
13 Respondents are in apparent violation of RCW 31.04.027(2) (2015) and RCW 31.04.027(1)(b) (2018), for directly
14 or indirectly engaging in any unfair or deceptive practice toward any person, and by being in violation of WAC
15 208-620-550(5) and (6); WAC 208-620-610(5); WAC 208-620-630(1) and (1)(d); WAC 208-620-630(2), (6), and
16 (7); and WAC 208-620-640.

17 **2.2 False or Deceptive Statements or Representations.** Based on the Factual Allegations set forth in Section I
18 above, Respondents are in apparent violation of RCW 31.04.027(7) (2015) and RCW 31.04.027(1)(g) (2018), for
19 making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other
20 financing or conditions for a residential mortgage loan, and by being in violation of WAC 208-620-550(5) and
21 WAC 208-620-640.

22 **2.3 Violations of Applicable Federal Law.** Based on the Factual Allegations set forth in Section I above,
23 Respondents are in apparent violation of RCW 31.04.027(13) (2015) and RCW 31.04.027(1)(m) (2018), for
24 violating any applicable federal law or regulation relating to the activities governed by the Act, including but not
25 limited to the Truth in Lending Act, 15 U.S.C. §1601 *et seq.*, as implemented by Regulation Z, 12 C.F.R. Part 1026
26 *et seq.*; the Federal Trade Commission Act, 15 U.S.C. §45(a) *et seq.*; and the Mortgage Acts and Practices Rule

1 (MAP Rule), Section 626 of the Omnibus Appropriations Act, 2009 (P.L. 111-8), as implemented by Regulation
2 N, 12 C.F.R. Part 1014 *et seq.*

3 **2.4 False, Misleading, or Deceptive Advertisements.** Based on the Factual Allegations set forth in Section I
4 above, Respondents are in apparent violation of RCW 31.04.135 for advertising or permitting to be advertised, in
5 any manner whatsoever, any statement or representation with regard to rates, terms, or conditions for the lending of
6 money that is false, misleading, or deceptive.

7 **III. AUTHORITY TO IMPOSE SANCTIONS**

8 **3.1 Authority to Revoke License.** Pursuant to RCW 31.04.093(3), the Director may revoke a license when a
9 licensee, either knowingly or without the exercise of due care, has violated any provision of this Act or any rule
10 adopted under this Act, or has failed to comply with any subpoena issued by the Director under the Act.

11 **3.2 Authority to Impose Fines.** Pursuant to RCW 31.04.093(4), the Director may impose fines of up to one
12 hundred dollars per day, per violation, on the licensee or any other person subject to the Act, for any violation of the
13 Act or failure to comply with any subpoena issued by the Director under the Act.

14 **3.3 Authority to Collect Investigation Fees.** Pursuant to RCW 31.04.145(3) and WAC 208-620-590, WAC 208-
15 620-610(7), every licensee investigated by the Director or the Director's designee shall pay for the cost of the
16 investigation, calculated at the rate of \$69.01 per staff hour devoted to the investigation.

17 **3.4 Authority to Recover Costs and Expenses.** Pursuant to RCW 31.04.205(2), the Director may recover the
18 state's costs and expenses for prosecuting violations of the Act.

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

20 Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as set forth in
21 the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis
22 for the entry of an Order under RCW 31.04.093, RCW 31.04.165, RCW 34.04.202, and RCW 31.04.205.

23 Therefore, it is the Director's intent to ORDER that:

24 **4.1** Respondent American Financial Network, Inc.'s license to conduct the business of a
25 consumer loan company be revoked.

- 1 4.2 Respondent American Financial Network, Inc. be prohibited from participation in the
2 conduct of the affairs of any consumer loan company subject to licensure by the Director,
in any manner, for a period of five (5) years.
- 3 4.3 Respondent John Robert Sherman III be prohibited from participation in the conduct of the
4 affairs of any consumer loan company subject to licensure by the Director, in any manner,
for a period of five (5) years.
- 5 4.4 Respondents American Financial Network, Inc. and John Robert Sherman III jointly and
6 severally pay a fine. As of the date of this Statement of Charges, the fine totals \$200,000.
- 7 4.5 Respondents American Financial Network, Inc. and John Robert Sherman III jointly and
8 severally pay an investigation fee of \$15,500.
- 9 4.6 Respondents American Financial Network, Inc. and John Robert Sherman III 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.

10 **V. AUTHORITY AND PROCEDURE**

11 This Statement of Charges and Notice of Intent to Enter an Order to Revoke License, Prohibit from
12 Industry, Impose Fines, Collect Investigation Fees, and Recover Costs and Expenses of Prosecution is entered
13 pursuant to the provisions of RCW 31.04.093, RCW 31.04.165, RCW 31.04.202, and RCW 31.04.205, and is
14 subject to the provisions of chapter 34.05 RCW. Respondents may each make a written request for a hearing as set
15 forth in the appropriate NOTICE OF OPPORTUNITY FOR ADJUDICATIVE HEARING AND TO DEFEND
16 accompanying this Statement of Charges.

17 Dated this 27th day of September 2021.

18 /s/
19 LUCINDA FAZIO, Director
20 Division of Consumer Services
21 Department of Financial Institutions

22 Presented by:

Approved by:

23 /s/
24 ANTHONY W. CARTER
25 Senior Legal Examiner
26 Division of Consumer Services

/s/
BARBARA J. PENTTILA
Financial Legal Examiner Supervisor
Division of Consumer Services