

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civ. Action No. \_\_\_\_\_

DENVER METRO FAIR HOUSING CENTER, INC.

*Plaintiff,*

v.

BELCO CREDIT UNION

*Defendant.*

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**COMPLAINT**

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**I. NATURE OF THE ACTION**

1. This civil rights action challenges Bellco Credit Union’s (“Bellco” or “Defendant”) discriminatory lending practices. Bellco maintains a policy of denying home mortgage loans to women who are on maternity leave, regardless of whether the leave is paid or unpaid and regardless of whether the would-be borrower has sufficient liquid savings to compensate for any income lost during her leave period. Bellco’s policy discriminates based on sex and familial status.

2. Plaintiff Denver Metro Fair Housing Center (“DMFHC” or “Plaintiff”) is a fair housing organization dedicated to eliminating housing discrimination in the Denver metropolitan area. The DMFHC brings this action for declaratory judgment, injunctive relief, and damages

against Defendant Bellco for sex and familial status discrimination in providing home mortgage credit, in violation of the federal Fair Housing Act (“FHA”), 42 U.S.C. § 3601, *et seq.*, and the Colorado Fair Housing Act, Colo. Rev. Stat. § 24-34-501 *et seq.*

3. No valid underwriting requirement supports Bellco’s discriminatory policy of denying home mortgage loans to women on maternity leave. To the contrary, extensive guidance from federal regulators should have made it clear to Bellco that it cannot deny credit simply because the would-be borrower is on or plans to use maternity leave. The U.S. Department of Housing and Urban Development (“HUD”) and Fannie Mae have written guidance that directs lenders to consider income an applicant is earning while on maternity leave as well as any liquid savings she can document. These agencies have furthermore instructed that a lender may not require as a condition of granting credit that the borrower first return to work, as long as she has sufficiently documented her current and future earnings.

4. Consistent with that guidance, HUD has pursued dozens of enforcement actions against lenders who, like Bellco, deny home mortgage loans to women on maternity leave and require that they return to work in order to qualify for a home mortgage loan.

5. Bellco’s discriminatory lending practices are motivated by discriminatory intent based on sex and familial status, and its lending practices have an unjustified and unlawful disparate impact on women and families with children, in violation of the federal Fair Housing Act and the Colorado Fair Housing Act.

6. As a result of Bellco’s discriminatory conduct, the DMFHC has been required to divert scarce time and money to investigate and counteract Bellco’s policies and practices. Bellco’s unlawful conduct has furthermore frustrated the DMFHC’s mission to eliminate

housing discrimination and to promote housing choice for all people in the Denver metropolitan area.

7. The DMFHC therefore brings this action for damages, injunctive, and declaratory relief, attorneys' fees and costs, and such other relief as the Court may deem appropriate.

## **II. JURISDICTION**

8. This Court has jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §§ 1331 and 1343, and 42 U.S.C. § 3613(a).

9. This Court has supplemental jurisdiction over Plaintiff's related claim under the Colorado Fair Housing Act pursuant to 28 U.S.C. § 1367(a) because that claim derives from a common nucleus of operative fact as Plaintiff's federal causes of action. Plaintiff's federal and state law claims all challenge Belco's discriminatory lending practices.

10. Venue is proper in this District under 28 U.S.C. §§ 85 and 1391(b)(2) because Plaintiff's claims arose in and concern property located in Denver County. Venue is also proper under 28 U.S.C. § 1391(b)(3) because Belco is subject to this Court's personal jurisdiction.

## **III. PARTIES**

11. Plaintiff DMFHC is a private, non-profit fair housing corporation incorporated under the laws of Colorado, with its principal place of business in Denver.

12. The DMFHC's mission is to eliminate housing discrimination and to promote housing choice for all people in the Denver metropolitan area through education, advocacy, and enforcement of fair housing laws. To further its mission, the DMFHC educates home seekers and housing providers regarding fair housing laws, engages in advocacy efforts to build general

awareness of fair housing law, investigates complaints of unlawful housing discrimination, and investigates other potential fair housing violations through its testing program.

13. Bellco is a non-profit corporation incorporated under the laws of Colorado, with its principal place of business in Greenwood Village.

#### **IV. FACTUAL ALLEGATIONS**

14. As part of its ongoing efforts to ensure compliance with fair housing laws, in 2016, the DMFHC conducted telephonic testing of several banks that operate in the Denver area to determine if any of them were discriminating against women on maternity leave who wanted to apply for a home mortgage loan. The DMFHC decided to test for lending discrimination against women who were using maternity leave because HUD has devoted substantial attention to this issue in recent years and because the DMFHC had learned that another local bank was engaging in such discriminatory practices.

15. The DMFHC included Bellco in its testing initiative based on Bellco's size and presence in Denver and throughout Colorado. Bellco is a high-volume loan originator in Colorado, maintains more than twenty branches throughout the State, and engages in prominent marketing activities such as billboard advertising.

16. The DMFHC's testing revealed that Bellco maintains discriminatory policy of denying home mortgage loans to women on maternity leave, and requiring that a mother return to work for at least thirty days before Bellco will even consider her home mortgage loan application, regardless of whether the leave is paid or unpaid and regardless of whether she has liquid savings to compensate for any temporary salary reduction resulting from her maternity leave.

17. Between May and August 2016, the DMFHC conducted five telephonic tests of Bellco to determine whether Bellco discriminated based on a would-be borrower's maternity leave status. The DMFHC maintains an audio recording of each test.

18. The DMFHC gave each tester a detailed profile in order for the tester to communicate information regarding her qualifications, income and creditworthiness, her husband's income and creditworthiness, and maternity leave status.

19. Each tester's profile had a strong credit score in the mid-700s, a household income with two earners bringing in a stable income, and adequate savings for a down payment.

20. In order to control for race, the DMFHC used white, female testers.

21. For each test, the tester initiated a phone conversation with a Bellco loan officer, in which the tester expressed interest in buying a home and sought basic information about the mortgage application process, loan options, and interest rates.

22. Two of the five tests were control tests, in which the testers were not on (or about to go on) maternity leave.

23. One control tester spoke with Bellco loan officer Amanda French on May 12, 2016. Ms. French provided information about Bellco's application process, down payments, and credit scores and offered to email the tester information about potential loan options based on the couple's savings, income, and credit history.

24. The second control tester spoke by telephone with Bellco loan officer John [last name unknown] on June 23, 2016. John gave the tester information about Bellco's loan application process and current interest rates and told her that Bellco services 97.5% of the loans

it underwrites. He informed her of the process for proceeding with an application, which starts with using Fannie Mae's automated underwriting system for obtaining a preapproval.

25. A third tester spoke by telephone with Ms. French on May 23, 2016. This tester conveyed to Ms. French that she was shopping for a mortgage with her husband as a first-time home buyer and that she was two weeks into a sixteen-week maternity leave.

26. Ms. French told the third tester that she would need to return to work and provide a month's worth of paystubs before she and her husband could close on a home with Bellco. In response to the tester's request for an explanation of this policy, Ms. French responded that Bellco wanted to "make sure that you do return to work and at the same pay" and that it would not consider income earned during maternity leave because it was not "regular income" or "expected to continue through the future."

27. The fourth tester spoke by telephone with Bellco loan officer Brad Cler on June 10, 2016. This tester was also shopping for a mortgage with her husband while on paid maternity leave.

28. Mr. Cler told the fourth tester that if the couple wanted to use both of their incomes to qualify for a loan, she would need to return to work in order to close on a home. The tester reminded Mr. Cler that she was on paid leave. He responded that Bellco still would not consider her earnings until she had returned to work for a month because "[a] lot of people say they are going to go back to work and then they don't so that is why we require that you actually are back at work in order to use your income . . . ."

29. The fifth tester spoke by telephone with Bellco loan consultant Genesis Gomez on August 12, 2016. This tester informed Ms. Gomez that she was on unpaid maternity leave

following the birth of her son three weeks ago and that she had \$72,000 in savings. Ms. Gomez told the tester that she would have to return to work and submit one month of pay stubs before she would be eligible for a home mortgage loan from Bellco. Ms. Gomez did not state that Bellco could consider the tester's liquid savings as qualifying income. Ms. Gomez unequivocally communicated that women on maternity leave must return to work as a threshold condition to potentially qualify for a home mortgage loan from Bellco.

#### **V. FEDERAL GUIDANCE REGARDING MATERNITY LEAVE**

30. Bellco maintains and applies a clear policy of denying home mortgage loans to women who are on maternity leave. Bellco will not consider a credit application from a woman on maternity leave until she has returned to work for at least one month.

31. Bellco's policy is contrary to unambiguous guidance from authoritative sources regarding a lender's duty not to discriminate based on sex and familial status. Bellco thus is or should be on notice that its policy is discriminatory and unlawful.

32. As early as 2010, HUD announced that it was unlawful for mortgage lenders to refuse to lend to expectant mothers or those on maternity leave. In response to a newspaper report describing the prevalence of such discrimination, HUD announced in July 2010 that it was launching "multiple investigations" of specific lenders. See U.S. Dep't of Housing & Urb. Dev., HUD To Investigate Mortgage Lenders Who Discriminate Against Expectant Mothers And New Parents, HUD No. 10-158 (July 21, 2010), *available at* [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2010/HUDNo.10-158](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2010/HUDNo.10-158).

33. In June 2011, HUD announced a settlement with one mortgage lender regarding the failure to make loans based on pregnancy or parental leave, and simultaneously announced that it was charging another with similar discrimination. See U.S. Dep't of Housing & Urb. Dev., HUD Acts Against Pregnancy Discrimination In Home Mortgages, HUD No. 11-108 (June 1, 2011), *available at* [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2011/HUDNo.11-108](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2011/HUDNo.11-108).

34. At the same time, HUD provided guidance specifically targeted to FHA loans, making clear that a lender's obligation to verify a borrower's income was satisfied with (1) documentation of the borrower's intent and right to return to work; and (2) confirmation that the borrower qualified for the loan "taking into account any reduction of income due to their leave." *Id.*

35. In November 2011, HUD announced another settlement involving similar practices. As part of that settlement, the lender agreed to adopt practices that would ensure that it did not discriminate against applicants on parental leave. See U.S. Dep't of Housing & Urb. Dev., HUD Reaches Settlement With Connecticut Lender Accused Of "Maternity Discrimination," HUD No. 11-261, (Nov. 3, 2011) *available at* [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2011/HUDNo.11-261](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2011/HUDNo.11-261).

36. These actions were only the beginning. Between 2010 and 2014, more than 190 complaints were filed with HUD alleging similar failure to make home loans because of



pregnancy or parental leave. By the end of 2014, HUD had settled more than 40 of them, creating an extensive public record as to proper practices.

37. Some of HUD's settlements have imposed specific requirements on lenders that are flatly inconsistent with Bellco's practices here. For example, in 2013, as part of a publicly available settlement with HUD, Primary Residential Mortgage agreed to a set of underwriting practices applicable to borrowers who were scheduled to be on parental leave at the time of the first mortgage payment. In such circumstances, the lender agreed to consider whether the borrower's "available liquid reserves and income, including disability income and non-primary employment related income, is sufficient, during the period between the date the first payment is due and the applicant's scheduled return to work." Conciliation Agreement with Primary Residential Mortgage, Exhibit A ("Parental Leave Policy") (Mar. 28, 2013).

38. HUD has continued to pursue aggressive action against lenders like Bellco that impose unnecessary and impossible-to-meet requirements that bar those on parental leave from getting loans for which they are qualified. For example, in December 2012, HUD filed a complaint against Wells Fargo for similar practices with respect to FHA-insured loans as well as conventional loans. In resolving that matter in 2014, Wells Fargo agreed to pay \$3.5 million to compensate victims. It also adopted new underwriting guidelines for those on parental or other temporary leave, pursuant to which borrowers scheduled to be on leave at the time the first mortgage payment is due may rely upon any combination of income received during leave or liquid assets not otherwise required for the loan to meet underwriting standards. See Conciliation Agreement with Wells Fargo Bank 5-6, Exhibit B (Oct. 8, 2014).

39. HUD's enforcement activities regarding lending discrimination based on maternity leave status continue. In July 2016, HUD announced a settlement of its charge against Citizens Bank based on the bank's refusal to grant an application for a home equity line of credit to a female applicant who was on maternity leave. Like Bellco does, Citizens Bank had told the applicant that she would have to return to work before it would approve her application. The settlement requires a \$40,000 payment to the victim and a \$75,000 donation to a HUD-approved fair housing or advocacy organization. *See* U.S. Dep't of Housing & Urb. Dev., HUD Approves Agreement Requiring Citizens Bank/Citizens Bank of Pennsylvania to Pay \$115,000 for Allegedly Denying Loan to Woman on Maternity Leave, HUD No. 16-116 (July 29, 2016), *available at* [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2016/HUDNo\\_16-116](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2016/HUDNo_16-116).

40. Guidance issued by purchasers of mortgage loans further confirms that Bellco had no basis for its conduct. For example, in the version of its Selling Guide issued in September 2013, Fannie Mae explained that, in the case of an employee expected to be on leave as of the first mortgage payment date, a lender should consider a borrower's income while on leave and, if such income is lower than the borrower's usual income and insufficient to support mortgage payments, it also should take into account the borrower's savings as available to supplement the borrower's income. *See* Fannie Mae, Selling Guide: Fannie Mae Single Family 361363 (September 24, 2013) *available at* <https://www.fanniemae.com/content/guide/sel092413.pdf>.

41. Given this public guidance from HUD and Fannie Mae, Bellco should have known that its policy is unlawful.

## VI. INJURY TO PLAINTIFF

42. The DMFHC has been injured by being forced to divert its limited resources to identify and counteract Bellco's discriminatory conduct. Furthermore, Bellco's discriminatory conduct has frustrated the DMFHC's mission of eliminating housing discrimination and promoting housing choice for all people in the Denver metropolitan area.

43. The DMFHC has made significant efforts and expended considerable resources to ensure equal housing opportunities in the Denver area without regard to sex or familial status, and Defendant's discriminatory practices have impeded its efforts.

44. As a result of Defendant's unlawful actions, the DMFHC has been required to divert scarce time, money, and resources from activities it would otherwise have engaged in that would have furthered its mission. It has had to divert resources in order to, among other things:

- (a) Investigate Bellco's policy and application thereof;
- (b) Develop the testing protocol and pay for the telephonic tests;
- (c) Conduct a workshop on fair housing rights including fair lending;
- (d) Conduct housing provider and consumer outreach; and
- (e) Develop a PSA for housing providers and consumers.

DMFHC would not have engaged in these activities but for Defendant's discriminatory conduct.

45. Bellco's discriminatory conduct described herein is willful, intentional, and knowing, and/or implemented with callous and reckless disregard for the rights of Plaintiff and would-be home mortgage loan borrowers in the Denver metropolitan area. Bellco knew or should have known that its policy of denying home mortgage loans to women who are using maternity leave was unlawful and illegal.

46. Unless enjoined, Defendant will continue to engage in the unlawful conduct described herein. The extent of DMFHC's injuries will increase unless Bellco ceases to discriminate based on sex and familial status.

47. In acting or omitting to act as alleged herein, Bellco acted through its employees and/or agents, and is liable on the basis of the acts and omissions of its employees and/or agents.

48. In acting or omitting to act as alleged herein, each employee or officer of Bellco was acting in the course and scope of his or her actual or apparent authority pursuant to such agencies, or the alleged acts or omissions of each employee or officer as agent were subsequently ratified and adopted by Bellco as principal.

## **VII. CAUSES OF ACTION**

### **FIRST CLAIM FOR RELIEF – FAIR HOUSING ACT 42 U.S.C. § 3604**

49. Plaintiff re-alleges and incorporates by reference the remainder of this Complaint, as if set forth fully herein.

50. The acts, policies, and practices by Defendant alleged herein were motivated by discriminatory intent based on sex and familial status and have had an unlawful, unjustified disparate impact on women and families with children.

51. Defendant's acts, policies, and practices discriminate in the sale of a dwelling and/or make unavailable or deny a dwelling because of sex and familial status, in violation of 42 U.S.C. § 3604(a).

52. Defendant's acts, policies, and practices also constitute discrimination because of sex and familial status in the terms, conditions, or privileges of sale of a dwelling, or in the

provision of services or facilities in connection with such dwelling, in violation of 42 U.S.C. § 3604(b).

**SECOND CLAIM FOR RELIEF – FAIR HOUSING ACT**  
**42 U.S.C. § 3605**

53. Plaintiff re-alleges and incorporates by reference the remainder of this Complaint, as if set forth fully herein.

54. Defendant’s acts, policies, and practices were motivated by discriminatory intent based on sex and familial status and have had an unlawful, unjustified disparate impact on women and families with children.

55. Defendant’s acts, policies, and practices provide different terms, conditions, and privileges on the basis of sex and familial status in connection with the making of residential real estate-related transactions, in violation of 42 U.S.C. § 3605.

**THIRD CLAIM FOR RELIEF – COLORADO FAIR HOUSING ACT**  
**Colo. Rev. Stat. § 24-34-502**

56. Plaintiff re-alleges and incorporates by reference the remainder of this Complaint, as if set forth fully herein.

57. Defendant’s acts, policies, and practices are motivated by discriminatory intent based on sex and familial status and have an unlawful, unjustified disparate impact on women and families with children.

58. Defendant’s acts, policies, and practices constitute discrimination in the sale of a dwelling and/or making unavailable or denying dwellings because of sex and familial status, in violation of Colorado Revised Statute Section 24-34-502(1)(a).

59. Defendant's acts, policies, and practices constitute discrimination in the treatment of applications for financial assistance for the acquisition of housing, in violation of Colorado Revised Statute Section 24-34-502(1)(b).

**PRAYER FOR RELIEF**

58. WHEREFORE, Plaintiff prays that this Court grant the following relief:

- A. Declare that Defendant's actions violate the federal Fair Housing Act and the Colorado Fair Housing Act, and that these violations were willful;
- B. Enjoin Defendant and its directors, officers, agents, and employees from engaging in the conduct described herein and direct them to take all affirmative steps necessary to remedy the effects of the conduct described herein and to prevent additional instances of such conduct or similar conduct from occurring in the future;
- C. Enter a judgment for compensatory damages to Plaintiff in an amount to be proved at trial before a jury that would fully compensate Plaintiff for the injuries alleged herein resulting from Bellco's unlawful conduct;
- D. Enter a judgment awarding punitive damages to Plaintiff in an amount to be proved at trial before a jury, that would punish Bellco for the willful, wanton, and reckless conduct alleged herein;
- E. Award Plaintiff its reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 3613(c)(2) and Colo. Rev. Stat. § 24-34-505.6(6)(b); and
- F. Grant all such other relief as it deems just and equitable.

**JURY DEMAND**

Plaintiff demands a jury trial on all issues so triable.

Dated: March 10, 2017

Respectfully submitted,

/s/ Jamie L. Crook

Jamie L. Crook  
Glenn Schlactus  
Relman, Dane & Colfax PLLC  
1225 19<sup>th</sup> Street, NW, Suite 600  
Washington, D.C. 20036  
Tel: (202) 728-1888  
Fax: (202) 728-0848  
jcrook@relmanlaw.com  
gschlactus@relmanlaw.com

/s/ Amy Robertson

Civil Rights Education  
and Enforcement Center  
104 Broadway, Suite 400  
Denver, CO 80203  
Tel: (303) 757-7901  
Fax: (303) 593-3339  
arobertson@creeclaw.org

*Attorneys for Plaintiff Denver Metro Fair  
Housing Center, Inc.*