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10 * Pro Hac Vice Application To Be Submitted

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12 *Counsel for Plaintiffs and the Proposed Putative Class*

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

15 POONAM KHANNA,
16 on behalf of herself and all others similarly
17 situated,

18 Plaintiffs,

19 v.

20 FREEDOM MORTGAGE
CORPORATION,
21 Defendant.

Case No. '12CV2981 IEG BGS

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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23
24 Plaintiff Poonam Khanna (“Plaintiff”), individually and on behalf of all others similarly
25 situated, by and through her counsel, brings this Class Action Complaint against Defendant
26 Freedom Mortgage Corporation (“Freedom Mortgage”). Plaintiff, on her own behalf and on
27 behalf of a class of similarly situated individuals, alleges as follows upon personal knowledge as
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1 to herself and her own acts and experiences, and, as to all other matters, upon information and
2 belief, including investigation conducted by her attorneys.

3 **I. NATURE OF THE ACTION**

4 1. This action targets a lending practice that has an adverse and discriminatory
5 impact on expectant and new mothers.

6 2. At all relevant times, and pursuant to Fannie and Freddie guidelines, Freedom
7 Mortgage requires that any prospective borrower provide proof of income and documentation
8 that the income will continue for at least three years. In addition, Freedom Mortgage rechecks
9 the borrower's income just prior to the closing of the loan to ensure that there have been no
10 negative changes to the borrower's net income.

11 3. In making these decisions about loan eligibility, however, Freedom Mortgage
12 rejects applicants who are about to embark on maternity leave – *even if the borrower's net*
13 *income remains the same both before and during maternity leave*. Instead, Freedom Mortgage
14 simply informs the borrower that the loan cannot close until the period of maternity leave has
15 ended, and the borrower has returned to work.

16 4. This policy has the effect of penalizing mothers for having children and availing
17 themselves of maternity leave. As such, this conduct violates the Federal Fair Housing Act
18 ("FHA"), 47 U.S.C. § 3601 *et seq.*, as well as the Federal Equal Credit Opportunity Act
19 ("ECOA"), 15 U.S.C. § 1691 *et seq.* Accordingly, Plaintiff asserts claims on her own behalf and
20 on behalf of the other members of the below-defined Class for violations of the FHA and the
21 ECOA.

22
23 **II. JURISDICTION AND VENUE**

24 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, which
25 confers upon the Court original jurisdiction over all civil actions arising under the laws of the
26 United States.

1 **IV. FACTUAL BACKGROUND**

2 ***Guidelines Followed by Mortgage Lenders***

3 6. As government-sponsored entities created to strengthen American housing and
4 mortgage markets, Fannie Mae and Freddie Mac assist mortgage lenders by securitizing the
5 loans they originate. In this role, Fannie Mae and Freddie Mac have established guidelines
6 governing the conditions under which lenders provide home loans to consumers.

7 7. Fannie Mae and Freddie Mac guidelines require that borrowers have enough
8 income to pay for the loan on closing day. In addition, the borrower must demonstrate that her
9 income is likely to continue for a minimum of three years. Beginning in 2010, Fannie and
10 Freddie guidelines also required that lenders had to recheck an applicant's income status
11 immediately before the closing.

12 8. Thus, if a female applicant goes on maternity leave before the loan closes, that
13 sudden change in status may be flagged in the final stages of the underwriting process, before the
14 loan closes.

15 9. Importantly, however, in many situations a borrower will take maternity leave but
16 will experience *no* decrease in net income. As detailed below, in such cases, because the
17 borrower's income does not decrease, it is unlawful to reject the loan application.

18 10. Fannie Mae itself has publicly stated that there is "nothing in its guidelines that would
19 prohibit a borrower on maternity or paternity leave from qualifying for a mortgage, as long as the
20 borrower had proof at the time of the closing that his or her income would be adequate upon returning to
21 work."³

22
23 ***The Federal Fair Housing Act***

24 11. In April of 1968, Congress passed the Fair Housing Act ("FHA"), which was
25 codified as Title VII of the Civil Rights Act. The FHA was enacted to protect the purchaser or

26 _____
27 ³ <http://www.nytimes.com/2010/07/20/your-money/mortgages/20mortgage.html> (last visited
28 December 6, 2012).

1 renter of a dwelling from discrimination based upon race, color, religion, sex, and national
2 origin. In 1988, Congress amended the FHA to include disability and familial status as additional
3 protected classes.

4 12. In pertinent part, the FHA provides as follows:

5 In General. – It shall be unlawful for any person or other entity
6 whose business includes engaging in residential real estate-related
7 transactions to discriminate against any person in making available
8 such a transaction, or in the terms or conditions of such a
transaction, because of race, color, religion, sex, handicap, familial
status, or national origin.

9 42 U.S.C. § 3605(a).

10 13. Accordingly, the FHA affords home purchasers significant protection from
11 discrimination when they are seeking to qualify for a mortgage, and provides for a private right
12 of action.

13 14. In addition, the U.S. Department of Housing and Urban Development (“HUD”)
14 has authority to administer and enforce the provisions of the FHA. In this capacity, HUD has
15 stated that the FHA protects borrowers from being discriminated against based on maternity
16 leave if they plan to return to work and can otherwise continue to meet the income requirements
17 to qualify for a loan. In particular, HUD has stated publicly: “Pregnancy is not a basis to deny or
18 delay a loan. It’s just that simple. . . Mortgage professionals may verify income and other
19 resources and have eligibility standards but **they may not single out women on maternity leave**
20 **to deny or delay loans *that they are otherwise eligible for.*”⁴**

21
22 *The Federal Equal Credit Opportunity Act*

23 15. In April 1974, Congress passed the Equal Credit Opportunity Act (“ECOA”) in
24 order to bar any creditor from discriminating against any borrower participating in a credit-based
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27 ⁴http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2011/HUDNo.11-108 (last visited December 6, 2012) (emphasis added).

1 transaction. Like the FHA, the ECOA explicitly forbids discrimination on the basis of sex and
2 marital status. The ECOA provides, in pertinent part, as follows:

3 It shall be unlawful for any creditor to discriminate against any
4 applicant, with respect to any aspect of a credit transaction –

5 (1) on the basis of race, color, religion, national origin, sex or
6 marital status, or age (provided the applicant has the capacity
7 to contract);

8 (2) because all or part of the applicant’s income derives from any
9 public assistance program; or

10 (3) because the applicant has in good faith exercised any right
11 under this chapter.

12 15 U.S.C. § 1691(a).

13 16. The ECOA and its implementing regulations make it clear that “creditors” within
14 the meaning of the statute includes mortgage lenders and brokers. 12 C.F.R. § 202.2(l)(2).

15 ***Freedom Mortgage’s Discriminatory Lending Practices***

16 17. In or about spring 2012, Plaintiff applied and qualified for a home mortgage loan
17 through Freedom Mortgage. At the time, she was employed full-time and earning a steady
18 income.

19 18. On July 30, 2012, Plaintiff went on maternity leave from her employer. During
20 this time, Plaintiff received disability payments from her employer. The net income she received
21 during her maternity leave was almost identical to the net income that she received during full-
22 time employment.⁵

23 19. After Plaintiff notified Freedom Mortgage that she was on maternity leave,
24 Freedom Mortgage responded by informing her that, despite receiving the same net income
25 during maternity leave, the loan could not close. Freedom Mortgage also informed her that the
26 loan would not be able to close until Plaintiff had returned to work and submitted a pay stub

27 ⁵ Plaintiff’s net disability payments were only \$31 less per paycheck than her compensation
28 before maternity leave.

1 confirming that she had done so. Freedom Mortgage’s position was memorialized in a written
2 communication to Plaintiff, in which Freedom Mortgage stated: “Loan can’t close until borrower
3 has returned to work full time and paystub confirming return to work has been received.”

4 20. Plaintiff’s period of leave was temporary, as she intended to return to work full-
5 time. In addition, her net income remained precisely the same during her period of leave and
6 enabled her to meet the income requirements for the loan. Freedom Mortgage nonetheless
7 refused to proceed with the loan.

8 21. Because Plaintiff client’s income did not drop, and she was otherwise qualified
9 for the loan, Freedom Mortgage’s *per se* policy decision to cancel the loan pending Plaintiff’s
10 return from maternity leave discriminates on the basis of sex and familial status.

11 **V. CLASS ACTION ALLEGATIONS**

12 22. Plaintiff brings Counts I and II, as set forth below, on behalf of herself and as a
13 class action, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of
14 Civil Procedure on behalf of a Class defined as:

15 All women in the United States who were denied a home loan by
16 Freedom Mortgage based on maternity leave (the “Class”).

17 Excluded from the Class are Freedom Mortgage and its subsidiaries and affiliates; all persons
18 who make a timely election to be excluded from the Class; governmental entities; and the judge
19 to whom this case is assigned and any immediate family members thereof.

20 23. Certification of Plaintiff’s claims for classwide treatment is appropriate because
21 Plaintiff can prove the elements of his claims on a classwide basis using the same evidence as
22 would be used to prove those elements in individual actions alleging the same claims.

23 24. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the
24 class are so numerous that individual joinder of all Class members is impracticable. On
25 information and belief, there are thousands of consumers who have been affected by Freedom
26 Mortgage’s wrongful conduct. The precise number of the Class members and their addresses is
27 presently unknown to Plaintiff, but may be ascertained from Freedom Mortgage’s books and
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1 records. Class members may be notified of the pendency of this action by recognized, Court-
2 approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet
3 postings, and/or published notice.

4 **25. Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2)**
5 **and 23(b)(3).** This action involves common questions of law and fact, which predominate over
6 any questions affecting individual Class members, including, without limitation:

7 a. whether Freedom Mortgage engaged in the conduct as alleged herein;

8 b. whether Plaintiff and the other Class members are entitled to actual, statutory, or
9 other forms of damages, and other monetary relief and, if so, in what amount(s);
10 and

11 c. whether Plaintiff and other Class members are entitled to equitable relief, including
12 but not limited to injunctive relief and restitution.

13 **26. Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are
14 typical of the other Class members' claims because, among other things, all Class members were
15 comparably injured through the uniform misconduct described above.

16 **27. Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).**
17 Plaintiff is an adequate representative of the Class because her interests do not conflict with the
18 interests of the other Class members she seeks to represent; she has retained counsel competent
19 and experienced in complex class action litigation; and Plaintiff intends to prosecute this action
20 vigorously. The Class members' interests will be fairly and adequately protected by Plaintiff and
21 her counsel.

22 **28. Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).**
23 Freedom Mortgage has acted or refused to act on grounds generally applicable to Plaintiff and
24 the other Class members, thereby making appropriate final injunctive relief and declaratory
25 relief, as described below, with respect to Class members as a whole.

1 41. The ECOA prohibits credit discrimination on the basis of sex or marital status,
2 among other protected categories. 15 U.S.C. § 1691(a)(1).

3 42. The ECOA regulates the conduct of “any creditor,” which includes any person
4 who regularly extends, renews, or continues credit including mortgage brokers. 15 U.S.C. §
5 1691(a)(e). The ECOA’s implementing regulations further specify that mortgage brokers that do
6 not participate in credit decisions are still regarded as “creditors” for purposes of the ECOA’s
7 prohibition against credit discrimination. 12 C.F.R. § 202.2(l)(2).

8 43. Freedom Mortgage is a “creditor” within the meaning of the ECOA, and is subject
9 to ECOA.

10 44. Freedom Mortgage’s policy and practice of rejecting loan applications when a
11 female applicant is about to embark on maternity leave, *despite* that the applicant’s income
12 during the period of leave remains at qualifying levels, violates ECOA, because the conduct
13 constitutes discrimination based upon the borrowers’ sex and/or marital status.

14 45. The ECOA provides a private right of action to consumers who have been
15 aggrieved by a violation of 15 U.S.C. § 1691(a). Specifically, “[a]ny creditor who fails to comply
16 with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for
17 any actual damages sustained by such applicant acting either in an individual capacity or as a
18 member of a class.” 15 U.S.C. § 1691e(a).

19 46. The ECOA further provides that any creditor found to have violated 15 U.S.C. §
20 1691(a) shall be liable to the aggrieved consumer for actual damages and for punitive damages
21 “in an amount not greater than \$10,000 . . . except that in the case of a class action the total
22 recovery under this subsection shall not exceed the lesser of \$500,000 or 1 per centum of the net
23 worth of the creditor.” 15 U.S.C.A. § 1691e(b). In addition, the court will award costs and a
24 reasonable attorney’s fee if the plaintiff prevails in the action. 15 U.S.C.A. § 1691e(d).

1 47. Plaintiff and each of the other members of the Class have suffered injuries as a
2 result of Freedom Mortgage's violation of 15 U.S.C. § 1691(a), including the time and expense
3 associated with pursuing alternative loans.

4 48. Plaintiff, on behalf of herself and the Class, therefore seeks redress as provided by
5 15 U.S.C.A. § 1691e, including actual, statutory, and punitive damages, equitable relief, and
6 attorney's fees and costs.

7 **VII. JURY DEMAND**

8 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all
9 claims in this Complaint so triable.

10 **VIII. REQUEST FOR RELIEF**

11 WHEREFORE, Plaintiff, individually and on behalf of the other members of the Class
12 proposed in this Complaint, respectfully requests that the Court enter an Order awarding the
13 following relief:

- 14 A. Declaring that this action may be maintained as a class action, certifying the Class as
15 requested herein, and appointing the undersigned counsel as Class Counsel;
- 16 B. Enjoining Freedom Mortgage from the unlawful practices and statutory violations
17 asserted herein;
- 18 C. An Order awarding actual damages, in an amount to be determined at trial;
- 19 D. An Order awarding statutory and punitive damages, and injunctive relief, pursuant to
20 the FHA, and the ECOA;
- 21 E. An Order awarding attorneys' fees and costs pursuant to the FHA, and the ECOA;
- 22 F. Such other and further relief as may be just and proper.

23 Dated: December 14, 2012

Respectfully submitted,

24 POONAM KHANNA, on behalf of
25 herself and all others similarly situated,

26 By: /s/ Todd C. Atkins
27 One of the Attorneys for Plaintiff
28 And the Proposed Putative Class

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