

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
MORTGAGE GUARANTY INSURANCE	)	
CORP., ELGINA CUNNINGHAM,	)	
and KELLY KANE.	)	
Defendants.	)	
_____	)	

**COMPLAINT**

The United States of America alleges:

**NATURE OF THE ACTION**

1. This action is brought by the United States to enforce the provisions of the Fair Housing Act, 42 U.S.C. §§ 3601-3619 (“FHA”).
2. This action is brought pursuant to 42 U.S.C. § 3612(o) on behalf of Carly Neals and her three minor children. It is also brought pursuant to the United States Attorney General’s authority under 42 U.S.C. § 3614(a) to seek redress for housing discrimination that raises an issue of general public importance.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345, 42 U.S.C. §§ 3612(o)(1), 3614(a).
4. Venue is appropriate pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to this action occurred in this judicial district.

## **PARTIES**

5. Defendant Mortgage Guaranty Insurance Corporation (“MGIC”) is a Wisconsin insurance corporation with its headquarters at 250-270 E. Kilbourn Avenue, Milwaukee, Wisconsin. MGIC maintains a mortgage insurance underwriting office at 11 Campus Boulevard, Suite 110, Newtown Square, Pennsylvania.

6. The primary business activity of MGIC is to provide private mortgage insurance (“PMI”) coverage with respect to residential real-estate related loans. MGIC insures loans secured by houses located across the United States.

7. MGIC has been approved by the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) as eligible to write mortgage insurance policies on the home mortgage loans they purchase. Roughly two-thirds of all mortgage loans secured by single-family houses originated in the United States since 2008 have been purchased by Fannie Mae or Freddie Mac. The underwriting guidelines of both Fannie Mae and Freddie Mac require homeowners to obtain PMI policies for their loan to be eligible for purchase by Fannie Mae and Freddie Mac in almost all cases when the principal amount of the loan exceeds 80% of the home’s value.

8. Defendant Elgina Cunningham is and has been employed by MGIC as an Underwriting Production Manager for 20 years. She manages the Newtown Square office.

9. Defendant Kelly Kane is and has been employed by MGIC as a mortgage insurance underwriter for over ten years. She reports to the Newtown Square office, and she is supervised by Defendant Cunningham.

10. Defendants are subject to Federal laws prohibiting discrimination in housing- and lending-related transactions, including the FHA and the regulations promulgated it.

11. Mortgage insurance premiums are a required part of the terms of many home mortgage loans. Pursuant to the regulations promulgated pursuant to the Truth in Lending Act, 12 C.F.R. § 226.4(b)(5), the projected mortgage insurance premiums to be paid over the duration of a loan are required to be disclosed, along with the projected interest charges, to borrowers as part of a loan's "finance charge."

12. In determining whether to approve mortgage insurance for an individual home mortgage loan applicant, MGIC has a stated practice of "establishing and applying policies, guidelines and procedures to determine whether a borrower qualifies for a mortgage loan." In so doing, MGIC works with the underwriters and other employees of the home mortgage loan applicant's lender.

13. Each Defendant engages in "residential real estate-related transactions" within the meaning of the FHA, 42 U.S.C. § 3605.

### **FACTUAL ALLEGATIONS**

14. Carly Neals is the mother of three children, the youngest of whom was born on June 21, 2010.

15. Ms. Neals applied in May 2010 with PNC Mortgage ("PNC") to refinance the mortgage loan on the home she owns jointly with her husband in Wexford, Pennsylvania.

16. PNC determined, based on Fannie Mae's underwriting guidelines, that Ms. Neals' request to borrow 90% of the value of her home required private mortgage insurance.

17. The payment schedule included in the preliminary Truth in Lending Disclosure statement sent to Ms. Neals by PNC included mortgage insurance premiums in the payments terms of the loan for the first 86 months.

18. As part of her loan application, Ms. Neals documented her wage and bonus income from her full-time job for the previous two years. This documentation included pay stubs from April 29, 2010 and May 13, 2010 showing net pay of \$2,148.98 in each two-week pay period.

19. After giving birth to her youngest son on June 21, 2010, Ms. Neals began a period of fully paid maternity leave from her job.

20. A July 20, 2010 article “Need a Mortgage? Don’t Get Pregnant”, appearing on the front page of the New York Times’ business section, described the problems that mothers on maternity leave were having in being approved for home mortgage loans.

21. On July 21, 2010, Vice President Biden and Secretary of Housing and Urban Development Shaun Donovan issued statements drawing attention to unfair lending practices related to mothers on maternity leave. Additionally, the United States Department of Housing and Urban Development issued a press release reminding entities involved in housing finance that they could not treat applicants on maternity leave in a way that discriminates on the basis of sex or familial status and could face investigation if they did so.

22. PNC decided in early July 2010 to approve Ms. Neals’ mortgage loan application conditioned on its approval by a private mortgage insurer.

23. MGIC received a request to insure Ms. Neals’ mortgage loan on July 12, 2010. MGIC routed the request to its Newtown Square office, which handles loans secured by property in the Northeastern United States. MGIC assigned Defendant Kane to underwrite the insurance

on Ms. Neals' loan. Defendant Kane discussed Ms. Neals' mortgage loan with her supervisor Defendant Cunningham on several occasions.

24. As part of the insurance underwriting process, Defendant Kane requested updated bank records for Ms. Neals. Because her employer's method of depositing maternity leave income differed from its deposit method for regular wage income, those bank records disclosed the fact that Ms. Neals was on maternity leave.

25. When Ms. Neals submitted the bank records on July 25, she explained that they substantiated that her maternity leave income matched her regular pre-leave wages. The statement disclosed that her employer deposited a maternity leave payment of \$2,363.75 on July 23 in lieu of her bi-weekly July 22 wage deposit.

26. Upon reviewing the bank records and maternity leave explanation on the morning of July 26, Defendant Kane called the PNC underwriter assigned to Ms. Neals' loan to explain that MGIC would not issue a mortgage insurance policy while she was on maternity leave.

27. At 11:09 a.m. that morning, Defendant Kane added the following note to the underwriting record for Ms. Neals' loan in MGIC's computer system:

[R]ec[eive]d updated bank statements along with email from Borrower that states she is on maternity leave. L[eft ]V[oice ]M[ail] for [PNC underwriter] Judy Abbs notifying her that we cannot proceed until Borrower is back to work full time.

28. MGIC also issued a "Request for Additional Information" letter to PNC at 11:06 a.m. on July 26, with regard to the application for Ms. Neals, stating that "[t]he underwriting of this mortgage application cannot be completed until the information specified below is received":

Provide most recent 30 day paystub with YTD earnings to support \$7933.00 for CARLY F NEALS . Verify Borrower is back to work full time

29. Upon receiving the voicemail from Defendant Kane and the letter from MGIC, PNC underwriter Judy Abbs told her colleagues that MGIC was requiring that Ms. Neals “has to be back to work in order to close” the loan. Accordingly, to satisfy MGIC’s requirement, Ms. Abbs added returning to work as a condition of the loan on July 26.

30. PNC informed Ms. Neals of MGIC’s requirement that she return to work.

31. Ms. Neals officially ended her maternity leave status on August 1, and went onto fully paid parental leave on August 2 and then fully paid vacation leave on August 9.

32. On August 2, PNC requested that Ms. Neals’ workplace supervisor provide a letter that she was back to work and an active employee to satisfy MGIC’s requirement. Her supervisor provided a letter that same day stating that “Carly is an active full time employee of mine.”

33. On August 9, PNC emailed Ms. Neals’ supervisor that “the Mortgage insurance company that was requiring the letter saying Carly was back to work is now stating that the fact that she is an active, full time employee of your[s] is not enough. They want something that says directly that Carly is back from her Maternity Leave as of 8/2.” Her supervisor provided a letter on August 10 stating “Carly Neals has returned to work and is now on vacation.”

34. On August 13, Ms. Neals contacted regional managers for PNC to escalate her complaints about being required to return from maternity leave. Her email plainly stated that “I did not want to spend my time with my newborn dealing with a refinance” but that she had “spent the last three months including my time at home with my baby, catering to the ongoing requests from PNC and the MI company.”

35. PNC underwriting supervisor Carol Zipp, in turn, escalated the matter at MGIC. She first contacted MGIC Senior Account Manager Harry Leonard. Mr. Leonard told Ms. Zipp that it would be an exception to approve insurance for Ms. Neals because MGIC's policy was that the borrower had to be back to work and have a paystub before approval could be granted. Accordingly, a PNC executive sent an August 16 email to Ms. Neals stating that a MGIC representative had "told our Underwriting Manager that it is MGIC's policy that borrower[] must be back to work and receive a paystub with full pay prior to closing."

36. Ms. Zipp also contacted Defendant Cunningham in her effort to escalate Ms. Neals' complaint at MGIC. When Ms. Zipp explained to Defendant Cunningham that Ms. Neals was officially no longer on maternity leave, and instead taking paid vacation leave, Defendant Cunningham said MGIC would let the application go through.

37. Defendant Cunningham added a note to the underwriting record for Ms. Neals' loan in MGIC's computer system at 5:31 p.m. on August 19 documenting that "the borrower has returned to work from maternity and is currently using vacation time," and that it was "OK to proceed."

38. MGIC then agreed to insure Ms. Neals' loan, and issued a commitment certificate on August 20, 2010. Nevertheless, Ms. Neals decided not to close her loan with PNC.

39. Prior to September 29, 2010, MGIC did not have a written policy specifically addressing borrowers receiving maternity leave income at the time it underwrote insurance for Ms. Neals' loan.

40. In the absence of a written policy on underwriting borrowers with maternity leave income, Defendants required home mortgage applicants on paid maternity leave to return to work before approving mortgage insurance related to a mortgage lending transaction.

41. Prior to September 29, 2010, MGIC underwrote multiple borrowers in addition to Ms. Neals who relied on maternity leave income at the time they applied for their loans.

42. MGIC amended its written underwriting guidelines on September 29, 2010, after receiving notice that Ms. Neals had filed a complaint with the United States Department of Housing and Urban Development, to specify that “[i]ncome from short-term disability or maternity/paternity leave may be used to qualify” if the borrower submits “[w]ritten verification to indicate the amount of income received (or to be received) during the leave, [t]he expected date range of the leave, and [w]ritten verification from the borrower indicating the borrower’s intent to return to work following the leave.”

#### **HUD ADMINISTRATIVE PROCESS**

43. Ms. Neals, on behalf of herself and her three minor children, timely filed a complaint of discrimination with the United States Department of Housing and Urban Development pursuant to 42 U.S.C. § 3610(a).

44. Pursuant to 42 U.S.C. § 3610(a), (b), the Secretary of the United States Department of Housing and Urban Development conducted and completed an investigation of the complaints, attempted conciliation without success, and prepared a final investigative report. Based upon the information gathered in the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that illegal discriminatory housing practices had occurred. Therefore, on May 31, 2011, the Secretary issued a Charge of

Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), against Defendants MGIC, Cunningham, and Kane.

45. On June 2, 2011, Ms. Neals elected to have the claims asserted in the Charge of Discrimination resolved in a civil action pursuant to 42 U.S.C. § 3612(a).

46. On June 2, 2011, an Administrative Law Judge issued a Notice of Election to Proceed in United States Federal District Court and terminated the administrative proceeding on Ms. Neals' complaint.

47. Following this Notice of Election, the Secretary of the United States Department of Housing and Urban Development authorized the Attorney General to commence a civil action, pursuant to 42 U.S.C. § 3612(o).

#### **FIRST CLAIM FOR RELIEF**

48. By the actions referred to in the foregoing paragraphs, Defendants MGIC, Cunningham, and Kane have:

- a. Discriminated in the terms, conditions, or privileges of the provision of services in connection with sale of a dwelling, because of sex and familial status, in violation of the Fair Housing Act, 42 U.S.C. § 3604(b); and
- b. Discriminated in making available, or in the terms or conditions of, a residential real estate-related transaction, because of sex and familial status, in violation of the Fair Housing Act, 42 U.S.C. § 3605(a).

49. Ms. Neals, and her three minor children, have suffered and continue to suffer damages as a result of Defendants' discriminatory conduct. Each is an "aggrieved person" pursuant to 42 U.S.C. § 3602(i).

50. The discriminatory actions of Defendants were intentional, willful, and taken in disregard of the federally protected rights of Ms. Neals and her three minor children.

**SECOND CLAIM FOR RELIEF**

51. The actions of Defendants MGIC, Cunningham, and Kane, as alleged herein, constitute:

a. Discrimination on the basis of sex and familial status in the terms, conditions, or privileges of the provision of services in connection with sale of a dwelling, in violation of the Fair Housing Act, 42 U.S.C. § 3604(b); and

b. Discrimination on the basis of sex and familial status in making available, or in the terms or conditions of, residential real estate-related transactions, in violation of the Fair Housing Act, 42 U.S.C. § 3605(a).

52. The actions of Defendants MGIC, Cunningham, and Kane, as alleged herein, constitute a denial of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601-3619, to a group of persons that raises an issue of general public importance, in violation of 42 U.S.C. § 3614(a).

53. In addition to Carly Neals and her three minor children, other persons may have been injured by Defendants' discriminatory actions as described above. Such individuals are also "aggrieved persons" under the Fair Housing Act, 42 U.S.C. § 3602(i) and have suffered injury and damages as a result of Defendants' violation of the FHA.

54. The discriminatory actions of Defendants were intentional, willful, and taken in disregard of the federally protected rights of others.

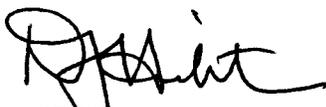
WHEREFORE, the United States prays that the Court enter an ORDER that:

1. Declares that the actions of Defendants, as alleged herein, violate the Fair Housing Act, 42 U.S.C. §§ 3601-3619;
2. Declares that Defendants have denied rights guaranteed under the Fair Housing Act to a group of persons, which denial raises an issue of general public importance;
3. Enjoins the Defendant, its agents, employees, and successors, and all other persons in active concert or participation with it, from:
  - a. Discriminating on the basis of sex or familial status in the in the terms, conditions, or privileges of the provision of services in connection with the sale of dwellings;
  - b. Discriminating on the basis of sex or familial status against any person in making available, or in the terms or conditions of, a residential real estate-related transaction;
  - c. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of Defendants' unlawful conduct to the position they would have been in but for the discriminatory conduct; and
  - d. Failing or refusing to take such actions as may be necessary to prevent the recurrence of any such discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of Defendants' unlawful conduct, and providing policies and procedures to ensure all applicants for residential-real estate related loans are served without regard to prohibited characteristics.

4. Awards compensatory and punitive damages, pursuant to 42 U.S.C. §§ 3612(o)(3), 3613(c)(1), 3614(d)(1)(B) to all the victims harmed by Defendants' discriminatory actions; and

5. Assesses a civil penalty against Defendants in an amount authorized by 42 U.S.C. § 3614(d)(1)(C), in order to vindicate the public interest.

The United States further prays for such additional relief as the interests of justice may require.



**DAVID J. HICKTON**  
United States Attorney

*/s/ Christy Criswell Wiegand*

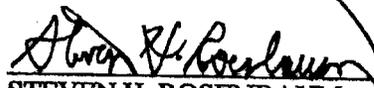
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