

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

Civil Action No.: 1:16-cv-00091-RM-MJW

TONYA SMITH, individually and as next friend and parent of K.S. and I.S.,  
minor children;  
JOSEPH SMITH, a/k/a RACHEL SMITH, individually and as next friend and  
parent of K.S. and I.S., minor children;  
K.S., a minor child; and,  
I.S., a minor child,

Plaintiffs,

vs.

DEEPIKA AVANTI,

Defendant.

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**PLAINTIFFS' UNOPPOSED MOTION FOR PARTIAL SUMMARY JUDGMENT**

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Pursuant to Federal Rule of Civil Procedure 56(a) and Local Rule 56.1, Plaintiffs Tonya Smith and Rachel Smith,<sup>1</sup> individually and as next friends and parents of K.S. and I.S., minor children (“Plaintiffs” or “the Smith family”), move for partial summary judgment that Deepika Avanti (“Defendant”) is liable to Plaintiffs on all claims for relief. Plaintiffs do not seek summary judgment as to the amount of damages or the other relief to which they may be entitled.

**Certificate of Conferral**

Counsel for Plaintiffs have conferred with counsel for Defendant regarding this Motion.

Defendant does not oppose this Motion.

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<sup>1</sup> Although Plaintiff’s legal name is Joseph Smith, she is known by and uses the name Rachel Smith in accordance with her female gender identity. Accordingly, this Motion refers to Plaintiff as Rachel and uses female pronouns to refer to her.

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. STATEMENT OF UNDISPUTED MATERIAL FACTS .....2

III. ARGUMENT.....5

    A. Defendant’s Refusal to Rent to the Smiths Violated The Fair Housing Act’s Prohibitions of Discrimination on the Bases of Sex and Familial Status.....5

        1. The FHA Applies To Defendant’s Property. ....6

        2. Defendant Violated the FHA by Discriminating Based on Sex Stereotypes.....6

        3. Defendant Violated the FHA by Discriminating Based on Familial Status.....14

    B. Defendant’s Actions Violated CADA’s Prohibitions on Discrimination on the Bases of Sex, Sexual Orientation, Transgender Status, and Familial Status.....16

        1. Defendant Violated CADA by Discriminating Based on Sex.....17

        2. Defendant Violated CADA by Discriminating Based on Sexual Orientation and Transgender Status.....18

        3. Defendant Violated CADA By Discriminating Based on Familial Status.....19

IV. CONCLUSION.....19

**TABLE OF AUTHORITIES**

<b><u>CASES</u></b>	<b>Page(s)</b>
<i>Baldwin v. Foxx</i> , Appeal No. 0120133080, 2015 WL 4397641 (E.E.O.C. July 16, 2015) .....	8, 10
<i>Bangerter v. Orem City Corp.</i> , 46 F.3d 1491 (10th Cir. 1995) .....	7
<i>Centola v. Potter</i> , 183 F. Supp. 2d 403 (D. Mass. 2002) .....	7, 13
<i>Colorado ex rel. Colo. Civil Rights Comm’n v. Adolph Coors Corp.</i> , 486 P.2d 43 (Colo. App. 1971) .....	17
<i>Deneffe v. Skywest, Inc.</i> , No. 14-cv-00348, 2016 WL 1643061 (D. Colo. Apr. 26, 2016) .....	10
<i>Etsitty v. Utah Transit Auth.</i> , 502 F.3d 1215 (10th Cir. 2007) .....	9, 10
<i>Fabian v. Hosp. of Cent. Conn.</i> , No. 12-cv-1154, 2016 WL 1089178 (D. Conn. Mar. 18, 2016) .....	10, 17
<i>Gladstone, Realtors v. Village of Bellwood</i> , 441 U.S. 91 (1979) .....	11
<i>Glenn v. Brumby</i> , 663 F.3d 1312 (11th Cir. 2011) .....	8, 13
<i>Glenn v. Brumby</i> , 724 F. Supp. 2d 1284 (N.D. Ga. 2010), <i>aff’d</i> , 663 F.3d .....	13
<i>Gorski v. Troy</i> , 929 F.2d 1183 (7th Cir. 1991) .....	15
<i>Heller v. Columbia Edgewater Country Club</i> , 195 F. Supp. 2d 1212 (D. Or. 2002) .....	8
<i>Henderson v. Thomas</i> , 913 F. Supp. 2d 1267 (M.D. Ala. 2012) .....	9
<i>Iniestra v. Cliff Warren Investments, Inc.</i> , 886 F. Supp. 2d 1161 (C.D. Cal. 2012) .....	15

*Kaeo-Tomaselli v. Pi'ikoi Recovery House for Women*,  
2011 WL 5572603 (D. Haw. Nov. 16, 2011) .....9

*Landesman v. Keys Condo. Owners Ass'n*,  
No. 04-cv-2685, 2004 WL 2370638 (N.D. Cal. Oct. 19, 2004) .....15

*Macy v. Holder*,  
No. 0120120821, 2012 WL 1435995 (E.E.O.C. Apr. 20, 2012) .....10

*Marina Point, Ltd. v. Wolfson*,  
640 P.2d 115 (Cal. 1982) .....15

*May v. Colorado Civil Rights Comm'n*,  
43 P.3d 750 (Colo. App. 2002) .....17

*Medina v. Income Support Div.*,  
413 F.3d 1131 (10th Cir. 2005) .....9, 10

*Morgan v. Sec'y of Hous. & Urban Dev.*,  
985 F.2d 1451 (10th Cir. 1993) .....15

*Mt. Side Mobile Estates P'ship v. Sec'y of Hous. & Urban Dev. ex rel. VanLoozenoord*,  
56 F.3d 1243 (10th Cir. 1995) .....7, 11

*N.A.A.C.P. v. Am. Fam. Mut. Ins. Co.*,  
978 F.2d 287 (7th Cir. 1992) .....11

*Price Waterhouse v. Hopkins*,  
490 U.S. 228 (1989).....7, 8, 14

*Reynolds v. Quarter Circle Ranch, Inc.*,  
280 F. Supp. 2d 1235 (D. Colo. 2003).....6

*Rumble v. Fairview Health Servs.*,  
No. 14-cv-2037, 2015 WL 1197415 (D. Minn. Mar. 16, 2015) .....9

*Schwenk v. Hartford*,  
204 F.3d 1187 (9th Cir. 2000) .....8

*Smith v. City of Salem*,  
378 F.3d 566 (6th Cir. 2004) .....6, 8, 10

*Terveer v. Billington*,  
34 F. Supp. 3d 100, 116 (D.D.C. 2014) .....7

*Thomas v. Osegueda*,  
 No. 15-cv-42, 2015 WL 3751994 (N.D. Ala. June 16, 2015) .....11

*United States v. Badgett*,  
 976 F.2d 1176 (8th Cir. 1992) .....15

*Videckis v. Pepperdine Univ.*,  
 --- F. Supp. 3d ---, 2015 WL 8916764 (C.D. Cal. Dec. 14, 2015).....7, 10, 13

**STATUTES**

C.R.S. § 24-34-301 .....16, 17, 18

C.R.S. § 24-34-501 .....5, 16, 17

C.R.S. § 24-34-502 ..... passim

C.R.S. § 24-34-505.6 .....5

42 U.S.C. § 3602.....5, 14

42 U.S.C. § 3604.....2, 5, 15

42 U.S.C. § 3613.....5

**OTHER AUTHORITIES**

Andrew Koppelman, *Why Discrimination Against Lesbian and Gay Men is Sex  
 Discrimination*, 69 N.Y.U. L. Rev. 197, 235 (1994) .....8

Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or  
 Gender Identity, 77 Fed. Reg. 5662-0, 5666 (Feb. 3, 2012).....11

Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42272-01, 42283 (July 16,  
 2015) .....11

Federal Rule of Civil Procedure 56(a) .....1, 5

U.S. Att’y Gen., *Memorandum re Treatment of Transgender Employment  
 Discrimination Claims Under Title VII of the Civil Rights Act of 1964* (Dec.  
 15, 2014) .....10

U.S. Dep’t of Educ. & U.S. Dep’t of Justice, *Dear Colleague Letter on  
 Transgender Students*, (May 13, 2016).....10

**INDEX OF EXHIBITS**

- Exhibit 1. Tonya Smith Declaration
- Exhibit 2. 2016-03-17 Scheduling Order
- Exhibit 3. 2015-01-22 Craigslist Ad
- Exhibit 4. 2015-04-24 to 2015-04-25 Email Chain
- Exhibit 5. 2015-04-24 Email Chain with Photo Attachment
- Exhibit 6. 2015-04-24 Craigslist Ad
- Exhibit 7. 2015-04-07 Craigslist Ad
- Exhibit 8. 2015-04-25 Craigslist Ad
- Exhibit 9. 2015-04-28 Craigslist Ad

## I. INTRODUCTION

In April 2015, Tonya and Rachel—a loving, committed same-sex couple—were searching for a new place to call home with their two young children, K.S. and I.S. Tonya and Rachel are two women who have been married for six years. Rachel also is transgender.<sup>2</sup> For the Smith family, their ideal home was an affordable, cozy space for the four of them that was close to nature and near a small school that would provide the children with close attention and that matched Tonya and Rachel’s educational philosophy.

On April 24, 2015, Tonya and Rachel found an advertisement for a rental property at 698 Dixon Road in Gold Hill, Colorado owned by Defendant that was perfect for them. After multiple emails, meeting Defendant, and seeing the dwellings she was offering for rent, Plaintiffs were excited to rent one of those dwellings. They were shocked, however, to learn that Defendant would not rent to them because of their “uniqueness” and Tonya and Rachel’s “unique relationship.” Specifically, Tonya and Rachel are “unique” because they are women married to each other, and not to men. Rachel is “unique” because she expresses her gender in a non-stereotypical fashion and her female gender identity does not conform to stereotypes about people designated male at birth. In sum, Defendant refused to rent to the Smith family because she believed that Tonya and Rachel’s failure to conform to sex stereotypes, their sexual orientation, and Rachel’s gender identity would jeopardize standing in the community.

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<sup>2</sup> Gender identity is an individual’s internal sense of gender, which may be male, female, neither, both, or a combination of male and female, and which may be different from that individual’s sex assigned at birth. The way an individual expresses gender identity is frequently called “gender expression,” and may or may not conform to social stereotypes associated with a particular gender. A transgender individual is an individual whose gender identity is different from the sex assigned to that person at birth. See GLAAD, *GLAAD Media Reference Guide - Transgender Issues*, available at <http://www.glaad.org/reference/transgender> (last accessed May 9, 2016).

Defendant also denied Plaintiffs the opportunity to rent one of her properties because of their children.

Plaintiffs now seek a judgment that Defendant violated the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended (“the Fair Housing Act” or “FHA”), 42 U.S.C. § 3604, and the Colorado Anti-Discrimination Act (“CADA”), C.R.S. § 24-34-502, by discriminating against them based on sex, sexual orientation, transgender status, and familial status. There are no material facts in dispute. Whether Defendant’s denial of housing to Plaintiffs violated the FHA and CADA is a matter of law for the Court.

## **II. STATEMENT OF UNDISPUTED MATERIAL FACTS**

Tonya and Rachel Smith are two women in a loving, committed relationship. UF #1.<sup>3</sup> Rachel is also transgender. UF #2. Tonya and Rachel have been married for more than six years and are the parents of two minor sons, K.S. and I.S. UF #3-5. Plaintiffs were domiciled together and intended to be domiciled together at all times relevant to this case. UF # 16, 22-23, 26, 46, 48. Each member of the Smith family is a resident of Colorado. UF #6.

Defendant resides in Boulder County, Colorado and owns the property located at 698 Dixon Road, Gold Hill, Colorado. UF #7-8. There are three free-standing buildings on the property. UF #9. For all times relevant to the case at bar, one building was subdivided into two separate independent livings spaces (the “townhouses”); a second building contained three-bedrooms; and a third building had been converted into a fourth dwelling. UF #10.

In early 2015, Defendant posted several advertisements on the classified ad website Craigslist.org, where she listed for rent a townhouse, a three-bedroom house, and a four-bedroom

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<sup>3</sup> Citations to “UF #[X]” refer to the numbered facts in the accompanying Separate Statement of Undisputed Facts.

house, all located at 698 Dixon Road, as well as a two-bedroom house in Gold Hill and a one-bedroom cottage on Dixon Road. UF #12-15. The townhouse was advertised as being approximately 900 square feet, including two bedrooms and one bathroom, located at 698 Dixon Road for \$1100 per month. UF #17-18.

In April 2015, Tonya and Rachel began searching for a new home for their family when their then-landlord told them that the property where they lived was being sold. UF #16. On April 24, 2015, Tonya and Rachel found Defendant's rental advertisement for the 900 square foot unit, and Tonya promptly sent Defendant an email that expressed interest in the property, listed the Smith family members, and mentioned that Rachel is transgender. UF #21-23. Defendant responded by email that the two-bedroom townhouse was available for rent for \$1,100 per month and that the three-bedroom house was also available to rent for \$1,600 per month. UF #24. Defendant asked Tonya to "please send photos of all of you," and Tonya complied. UF #25-26. The parties arranged a meeting at the property for later that evening. UF #27.

At that meeting, the Smith family viewed both the two-bedroom unit and the three-bedroom unit, and they met the different-sex, cisgender<sup>4</sup> couple that lived in the unit adjoining the advertised two-bedroom townhouse. UF #28-29. At Defendant's request, Plaintiffs discussed the possibility of renting the three-bedroom unit, but informed her that they would have to have a friend live with them to share the higher rent. UF #30. At the end of the visit, Plaintiffs reiterated their interest in renting the smaller unit, and that they were willing to consider renting the larger unit if their friend was able to join them. UF #31.

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<sup>4</sup> Cisgender is a term used to describe people who are not transgender. *See* GLAAD, *supra* note 2.

That night, however, Defendant emailed Tonya twice. UF #32. In the first email, Defendant informed Tonya that the Smith family was not welcome in the two-bedroom unit because of their children. UF #33. A few hours later, Defendant wrote Tonya a second email stating that, after speaking with her husband, Defendant decided that they had “kept a low profile and low attention for 30 years and want to continue it this way. But in a small town, like Gold Hill, this would not be possible.” UF #36. She then refused to rent either residence to the Smith family because “we really need to continue [to keep a] low profile.” UF #37. On April 25, 2015, Tonya responded to Defendant about her conversation with the potential roommate and wrote, “As far as keeping a low profile goes, I’m not quite sure what you mean? It sounded like a town where we would really fit in so I’m confused.” UF #38.

On April 25, 2015, Defendant wrote to Tonya again and refused to rent either of the properties to the Smith family. UF #39. In her email, Defendant wrote, “Your unique relationship would become the town focus, in small towns everyone talks and gossips, all of us would be the most popular subject of town, in this way I could not be a low profile [sic].” UF #40. Defendant said she had consulted with her husband “who personally would not care but immediately gave [her] this feedback” and also with a psychic friend “who gave [her] the same feed back [sic] and has a transvestite friend herself.” UF #43. She told Tonya that she did not want to “attract the town attention and there is no way to avoid this having the kids go to school, and I am not sure they would not be unincluded [sic] due to your uniqueness.” UF #41. Defendant told Tonya that it would be “better” for them if they were in a “larger town” and emphasized that the Smith family’s “uniqueness” would invite “everyone . . . into [Defendant’s] business and it would

jeopardize [sic] what I have had [for] 30 years.” UF #42. After refusing to rent to the Smith family, Defendant continued her attempts to rent her several dwellings. UF #44.

Plaintiffs searched for housing for several months but were unable to find a rental before they had to move out of their previous apartment. UF #45. As a result, Plaintiffs were forced to stay at Rachel’s mother’s house for a week, had to discard many possessions, and ultimately moved into an apartment in Aurora that did not meet their needs as well as Defendant’s properties would have. UF #46-52.

### **III. ARGUMENT**

Summary judgment is appropriate when “there is no genuine dispute as to any material fact [such that] the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Here, there are no material facts in dispute. Defendant’s denial of housing to the Smith family violated the FHA’s prohibition of housing discrimination on the basis of sex and familial status, 42 U.S.C. § 3604, and CADA’s prohibition of housing discrimination on the basis of sex, sexual orientation, transgender status, and familial status, C.R.S. § 24-34-502. Having been injured by Defendant’s discriminatory housing practices, each member of the Smith family has brought suit seeking redress for that discrimination, and each is entitled to judgment that Defendant is liable. *See* 42 U.S.C. §§ 3602(i), 3613; C.R.S. §§ 24-34-501(1), -505.6.

#### **A. Defendant’s Refusal to Rent to the Smiths Violated The Fair Housing Act’s Prohibitions of Discrimination on the Bases of Sex and Familial Status.**

Defendant’s denial of housing to the Smith family runs afoul of the FHA, which makes it unlawful “[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of . . . sex [or] familial status . . . .” 42 U.S.C. § 3604(a). The FHA also makes it illegal “[t]o

make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on . . . sex . . . [or] familial status . . . or an intention to make any such preference, limitation, or discrimination.” *Id.* at § 3604(c).

1. *The FHA Applies To Defendant’s Property.*

The FHA applies to Defendant’s properties because they are “dwellings,” i.e., “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families,” *id.* at § 3602(b),<sup>5</sup> and because they do not fall within any of the FHA’s exemptions. *Id.* at § 3603. Defendant does not dispute that she owns and offered for rent as separate residences both (1) the two-bedroom townhouse and (2) the three-bedroom dwelling she eventually denied to the Smiths; that she owns and rented (3) the adjoining townhouse to another couple; and that she owns and offered for rent (4) the third freestanding structure. Because the properties Defendant denied to the Smith family were plainly intended by Defendant to be occupied as residences, the FHA’s protections apply.

2. *Defendant Violated the FHA by Discriminating Based on Sex Stereotypes.*

The FHA forbids discrimination on the basis of sex stereotypes. Under the FHA, like under Title VII, discrimination “on the basis of sex” “encompasses both [discrimination based on] the biological differences between men and women, and gender discrimination, that is, discrimination based on a failure to conform to stereotypical gender norms.” *Smith v. City of Salem*, 378 F.3d 566, 573 (6th Cir. 2004) (ruling based on both Title VII and Equal Protection

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<sup>5</sup> “[T]he FHA and the term ‘dwelling’ used in it have been generously construed by the courts.” *Reynolds v. Quarter Circle Ranch, Inc.*, 280 F. Supp. 2d 1235, 1244 (D. Colo. 2003).

Clause);<sup>6</sup> *see also Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (“[W]e are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for in forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.”) (alteration and quotation omitted).

Discrimination based on stereotypes about the sex of the person to whom a woman should be attracted, whom she should marry, or with whom she should have children is discrimination on the basis of sex. Indisputably, attraction to men is a gender norm or stereotype about women, just as attraction to women is a gender norm or stereotype about men. As a result, discrimination on the basis of the sex of an individual’s preferred partner necessarily implicates stereotypes relating to “proper” sex-specific roles in romantic, marital, and/or sexual relationships. *See Videckis v. Pepperdine Univ.*, --- F. Supp. 3d ---, 2015 WL 8916764, at \*7 (C.D. Cal. Dec. 14, 2015) (“Stereotypes about lesbianism, and sexuality in general, stem from a person’s views about the proper roles of men and women—and the relationships between them.”); *Terveer v. Billington*, 34 F. Supp. 3d 100, 116 (D.D.C. 2014) (complaint alleging the plaintiff’s “sexual orientation is not consistent with the Defendant’s perception of acceptable gender roles” stated a valid claim of sex discrimination); *Centola v. Potter*, 183 F. Supp. 2d 403, 410 (D. Mass. 2002) (“Conceivably, a plaintiff who is perceived by his harassers as stereotypically masculine in every way except for his actual or perceived sexual orientation could maintain a Title VII cause of action alleging sexual harassment because of his sex due to

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<sup>6</sup> Courts look to Title VII for guidance on interpreting the application of the FHA’s anti-discrimination provisions. *See Mt. Side Mobile Estates P’ship v. Sec’y of Hous. & Urban Dev. ex rel. VanLoozenoord*, 56 F.3d 1243 n. 7 (10th Cir. 1995); *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1503 (10th Cir. 1995).

his failure to conform with sexual stereotypes about what ‘real’ men do or don’t do.”); *Heller v. Columbia Edgewater Country Club*, 195 F. Supp. 2d 1212, 1224 (D. Or. 2002) (crediting claim that female plaintiff faced sex discrimination because she did not conform to supervisor’s stereotype “that a woman should be attracted to and date only men”); *see also* Andrew Koppelman, *Why Discrimination Against Lesbian and Gay Men is Sex Discrimination*, 69 N.Y.U. L. Rev. 197, 235 (1994) (“There is nothing esoteric or sociologically abstract in the claim that the homosexuality taboo enforces traditional sex roles.”).

In short, discrimination against women like Tonya and Rachel Smith who defy sex stereotypes by having a female romantic and sexual partner is unlawfully “motivated by a desire to enforce heterosexually defined gender norms.” *Baldwin v. Foxx*, Appeal No. 0120133080, 2015 WL 4397641, at \*8 (E.E.O.C. July 16, 2015) (citation omitted). This is sex discrimination in violation of the FHA.

Likewise, “discrimination against a transgender individual because of her gender-nonconformity is sex discrimination . . . .” *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011). Prevalent gender stereotypes dictate that someone who was assigned the sex of male at birth, like Rachel, should express a male gender and identify as male. “A person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes. ‘[T]he very acts that define transgender people as transgender are those that contradict stereotypes of gender-appropriate appearance and behavior.’” *Id.* at 1316 (quotation omitted); *see also Smith*, 378 F.3d at 573 (*Price Waterhouse* applies when an individual “fails to act and/or identify with his or her gender”); *Schwenk v. Hartford*, 204 F.3d 1187, 1201 (9th Cir. 2000) (“the logic and language of *Price Waterhouse*” requires application of sex discrimination

protections to “[m]ale-to-female transsexuals . . . whose outward behavior and inward identity did not meet social definitions of masculinity”); *Rumble v. Fairview Health Servs.*, No. 14-cv-2037, 2015 WL 1197415, at \*2 (D. Minn. Mar. 16, 2015) (“Because the term ‘transgender’ describes people whose gender expression differs from their assigned sex at birth, discrimination based on an individual’s transgender status constitutes discrimination based on gender stereotyping.”); *Kaao-Tomaselli v. Pi’ikoi Recovery House for Women*, 2011 WL 5572603, at \*3 (D. Haw. Nov. 16, 2011) (Under the FHA, “transgender individuals may state viable sex discrimination claims on the theory that the perpetrator was motivated by the victim’s real or perceived failure to conform to socially-constructed gender norms.”).

The Tenth Circuit has recognized that sex stereotyping claims by lesbian, gay, bisexual, and transgender (LGBT) people may be actionable under federal sex discrimination protections, even though it has held (erroneously) that discrimination on the basis of transgender status or sexual orientation does not constitute *per se* sex discrimination. *See Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1222-24 (10th Cir. 2007);<sup>7</sup> *Medina v. Income Support Div.*, 413 F.3d 1131, 1135

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<sup>7</sup>In *Etsitty*, the Tenth Circuit recognized that its conclusions regarding the availability of sex discrimination protections for transgender people may be altered by new research that “may someday cause a shift in the plain meaning of the term ‘sex’ so that it extends beyond the two starkly defined categories of male and female.” 502 F.3d at 1222. Such research already exists. *See, e.g.*:

- M. Dru Levasseur, *Gender Identity Defines Sex: Updating the Law to Reflect Modern Medical Science Is Key to Transgender Rights*, 39 Vt. L. Rev. 943, 984, 1004 (2015) (“Many years of research have confirmed the importance and immutability of gender identity in sex determinations. . . . Sex is multifaceted, and of the multiple factors that determine sex, gender identity must be given primary weight, as the single most important *biological* determinant of sex.” (emphasis in original));
- Navah C. Spero, *Transgendered Plaintiffs in Title VII Suits: Why the Schroer v. Billington Approach Makes Sense*, 9 Conn. Pub. Int. L.J. 387, 410 (2010) (noting that “the term sex must evolve as scientific understanding of what sex is evolves” and that “[g]ender identity is currently understood to be medically part of sex”).

Given the evolution in current scientific and medical understanding, this court can and should reach its own resolution of this case. *Cf. Henderson v. Thomas*, 913 F. Supp. 2d 1267, 1289-90 (M.D. Ala. 2012) (noting that prior

(10th Cir. 2005).<sup>8</sup> Though the Tenth Circuit has not precisely addressed the precise contours of when “failure to conform to sex stereotypes” constitutes “discrimination ‘based on sex[,]’” *Deneffe v. Skywest, Inc.*, No. 14-cv-00348, 2016 WL 1643061, at \*11 (D. Colo. Apr. 26, 2016), as discussed above, federal courts across the country have. There simply is no dispute that LGBT people may assert sex stereotyping claims, whether under Title VII or the FHA.

Any suggestion that the FHA’s prohibition on sex-based discrimination does not apply to the discrimination experienced by Tonya and Rachel because of their sexual orientation and/or Rachel’s transgender status fails “to fully evaluate the nature of claims based on sexual orientation [and gender identity] discrimination.” *Videckis*, 2015 WL 8916764, at \*6. “[F]ocusing on the actions or appearance of the alleged victim of discrimination rather than the bias of the alleged perpetrator asks the wrong question and compounds the harm.” *Id.* That is, it would be wrong and contrary to the FHA’s language and purpose to “superimpose classifications such as ‘transsexual’ on a plaintiff, and then legitimize discrimination based on the plaintiff’s gender non-conformity by formalizing the non-conformity into an ostensibly unprotected classification.” *Smith*, 378 F.3d at 574; *see also Fabian v. Hosp. of Cent. Conn.*, No. 12-cv-1154,

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decision by Eleventh Circuit could be revisited because such decision was based on “the state of medical knowledge and art at the time” and since then there had been “life-changing advances in HIV treatment”).

<sup>8</sup> Several federal agencies have reached the opposite conclusion, agreeing that discrimination on the basis of gender identity is sex discrimination. *See Macy v. Holder*, No. 0120120821, 2012 WL 1435995, at \*11 (E.E.O.C. Apr. 20, 2012); U.S. Dep’t of Educ. & U.S. Dep’t of Justice, *Dear Colleague Letter on Transgender Students*, at 2 (May 13, 2016), available at <http://1.usa.gov/224DMvD>; U.S. Att’y Gen., *Memorandum re Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964*, at 2 (Dec. 15, 2014), available at <http://1.usa.gov/25yQ44V>. Likewise, the EEOC has noted “that sexual orientation is inseparable from and inescapably linked to sex and, therefore, that allegations of sexual orientation discrimination involve sex-based considerations.” *Baldwin*, 2015 WL 4397641, at \*5.

To paraphrase *Videckis*, the error of *Etsitty* and *Medina* is that “[s]imply put, the line between sex discrimination[, gender identity discrimination,] and sexual orientation discrimination is ‘difficult to draw’ because that line does not exist, save as a lingering and faulty judicial construct.” 2015 WL 8916764, at \*6.

2016 WL 1089178, at \*10 (D. Conn. Mar. 18, 2016) (“because discrimination ‘because of sex’ reaches discrimination based on gender nonconformity, the *exclusion* of discrimination on the basis of transgender identity from the protective scope of Title VII would be to take a certain class of gender nonconformity and reclassify it as a nonprotected status solely in order to exclude it” (emphasis original)).

The Department of Housing and Urban Development’s (“HUD”) interpretation of the FHA also is consistent with the aforementioned principles: “Discrimination based on sex under the Fair Housing Act includes discrimination because of nonconformity with gender stereotypes.” Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, 77 Fed. Reg. 5662-0, 5666 (Feb. 3, 2012). Hence, “[t]he Fair Housing Act does recognize discrimination against LGBT individuals when such discrimination is on the basis of sex, which is a protected characteristic, . . . which includes nonconformity with gender stereotypes.” Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42272-01, 42283 (July 16, 2015). This interpretation—that LGBT people are protected from discrimination on the basis of sex, including discrimination based on sex stereotypes under the FHA—is entitled to “considerable deference” because “HUD [is] the federal agency primarily assigned to implement and administer Title VIII.” *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 107 (1979); *see also VanLoozenoord*, 56 F.3d at 1249; *N.A.A.C.P. v. Am. Fam. Mut. Ins. Co.*, 978 F.2d 287, 300 (7th Cir. 1992). Consequently, other courts to have considered whether sex stereotyping claims by LGBT complainants are within the FHA’s sex discrimination prohibition have deferred to HUD’s interpretation. *See, e.g., Thomas v. Osegueda*, No. 15-cv-42, 2015 WL 3751994, at \*4 (N.D. Ala. June 16, 2015) (noting “the deference due by the court” to HUD’s

interpretation of the FHA and concluding that HUD's recognition of discrimination against LGBT people as "gender stereotyping in its interpretation of the FHA is a permissible reading of 'sex.'"). This Court should also defer to HUD's reasonable interpretation of the term "sex" and hold that sex discrimination under the FHA includes discrimination because of nonconformity with gender stereotypes, including stereotypes about the sex of the person to whom a woman should be attracted, whom she should marry, or with whom she should have children, and about the gender expression (including how to appear and act) and gender identity a person assigned the sex of male at birth should have.

Applying these principles to the present case, Defendant unlawfully refused to rent, refused to negotiate for the rental of, and otherwise made unavailable and denied dwellings located at 698 Dixon Road to Plaintiffs, and also made, printed, and published statements respecting the rental of a dwelling that indicated a preference, limitation, and discrimination based on Tonya and Rachel's "unique relationship" and the Smith Family's "uniqueness." UF #41-43. The "uniqueness" of Tonya and Rachel's relationship is that they defy stereotypical gender roles. Tonya and Rachel are "unique" because they are women married to each other, and not to men. Rachel also is "unique" because, as a transgender woman, she expresses her gender in a non-stereotypical fashion and her gender identity does not conform to sex stereotypes.

Based on the undisputed facts of this case, Defendant's references to Tonya and Rachel's "uniqueness" and "unique relationship" leads only to two plausible interpretations: The first is that Defendant's reference to Tonya and Rachel's "uniqueness" and "unique relationship" demonstrates that Defendant considered Tonya and Rachel, two women, to have transgressed gender norms by having a romantic and sexual relationship with each other and Rachel to have

transgressed gender norms by expressing a gender identity that differed with the sex assigned to her at birth. *See Glenn*, 663 F.3d at 1316; *Videckis*, 2015 WL 8916764, at \*7; *Centola*, 183 F. Supp. 2d at 410. Discrimination based on such anachronistic gender stereotypes constitutes illegal sex discrimination under the FHA.

The second is that Defendant erroneously viewed Rachel as a man who expressed “his” gender in a manner stereotypically associated with women. *See Glenn v. Brumby*, 724 F. Supp. 2d 1284, 1302 (N.D. Ga. 2010) (“Plaintiff’s desire to present as a woman at work did not comport with Brumby’s stereotype of how a biological male should dress or behave.”), *aff’d*, 663 F.3d at 1320-21 (testimony that the “decision to dismiss Glenn was based on his perception of Glenn as ‘a man dressed as a woman and made up as a woman,’ . . . support[ed] the district court’s conclusion that Brumby acted on the basis of Glenn’s gender non-conformity.”). That Defendant felt the need to point out that she consulted a friend who “has a transvestite friend herself” bolsters the conclusion that Defendant viewed Tonya and Rachel as subversive of traditional gender norms. Though seemingly conflating Rachel’s transgender status with simply dressing in a manner more commonly associated with a different gender, at their root, Defendant’s comments reiterate Defendant’s sense that Rachel defies sex stereotypes. Even under such erroneous perception by Defendant, her refusal to rent to the Smith Family was based on her view that Tonya and Rachel transgressed gender norms as a result of Rachel’s gender expression. Discrimination on this basis violates the FHA’s proscription of sex discrimination.

Defendant’s explanation that she wanted to keep a low profile or avoid jeopardizing her standing within the community is inextricably linked to prohibited discrimination. Simply put, Tonya and Rachel’s “uniqueness” (gender nonconformity) and their “unique relationship” (one

defying societally-defined gender norms) is precisely what would make them, in Defendant's estimation, stand out and not be accepted in a small town like Gold Hill, and what would jeopardize Defendant's position in the community. Defendant's intimation that K.S. and I.S. also would be discriminated against as a result of Tonya and Rachel's "uniqueness" and her concern that their presence in the school community would "attract the town attention," UF #41, underscores that Defendant's refusal to rent to the Smith family was rooted in their gender nonconformity.

Put simply, Defendant refused housing to the Smith Family because she did not want to have people who would stand out—because they defy sex stereotypes—living in her properties. This type of discrimination—"the entire spectrum of disparate treatment of men and women resulting from sex stereotypes," *Price Waterhouse*, 490 U.S. at 251—is precisely what the FHA was meant to prohibit. Because there are no material facts in dispute, this Court should find as a matter of law that Defendant is liable to Tonya and Rachel Smith for unlawful discrimination on the basis of sex in violation of the FHA.

3. *Defendant Violated the FHA by Discriminating Based on Familial Status.*

"'Familial status' means one or more individuals (who have not attained the age of 18 years) being domiciled with . . . a parent or another person having legal custody of such individual or individuals . . . ." 42 U.S.C. § 3602(k). There is no dispute that Tonya and Rachel are the parents of K.S. and I.S., and that the Smith family was and intended to be domiciled together at all times relevant to this case. UF #5, 22-23, 26, 46, 48. Nor is there any dispute that Defendant refused to rent the two-bedroom townhouse to the Smiths because their children would be living with them and expressed a preference to have a couple without children live

there. UF #33-34 (Defendant “prefer[ed] the couple” without children live there.). Defendant’s refusal to rent to the Smiths because of their children falls squarely within the FHA’s prohibition of discrimination based on familial status. *See, e.g., Morgan v. Sec’y of Hous. & Urban Dev.*, 985 F.2d 1451, 1457 (10th Cir. 1993) (upholding ALJ’s finding that mobile home park owner violated § 3604 of the FHA by enforcing “adults only” policy and refusing to allow the sale of a mobile home to a family with a child); *Gorski v. Troy*, 929 F.2d 1183, 1189 (7th Cir. 1991) (landlord who expressed a preference for tenants without children held in violation of section 3604).

It is of no import that Defendant rooted her denial in concerns about the level of noise the children might make, even if ostensibly based on her other tenants’ preference for silence. *See Iniestra v. Cliff Warren Investments, Inc.*, 886 F. Supp. 2d 1161, 1168 (C.D. Cal. 2012) (apartment complex’s blanket restriction on children to address noise concerns violated the FHA); *Landesman v. Keys Condo. Owners Ass’n*, No. 04-cv-2685, 2004 WL 2370638, at \*4 (N.D. Cal. Oct. 19, 2004) (“The desire for peace and quiet—while a worthy goal—is not a valid justification for denying access to common facilities on the basis of familial status.”); *Marina Point, Ltd. v. Wolfson*, 640 P.2d 115, 127 (Cal. 1982) (excluding children from property violated housing discrimination law, despite the fact that children are “rowdier, noisier, more mischievous and more boisterous than adults”). Nor does Defendant’s initial willingness to rent a different dwelling to the Smith family alter the fact that she engaged in impermissible familial status discrimination. “[T]he issue is not whether any housing was made available to [the Smiths], but whether [they were] denied the housing [they] desired on impermissible grounds.” *United States v. Badgett*, 976 F.2d 1176, 1179 (8th Cir. 1992).

Defendant impermissibly discriminated against the Smith Family because of their familial status, in writing, when she expressed her preference to rent to parties without children and explicitly refused to rent the townhouse to the Smith family because their children would be living with them. As there are no material facts in dispute, this Court should find as a matter of law that Defendant is liable to the Plaintiffs for unlawful discrimination on the basis of familial status in violation of Section 3604(a) and (c) of the FHA.

**B. Defendant’s Actions Violated CADA’s Prohibitions on Discrimination on the Bases of Sex, Sexual Orientation, Transgender Status, and Familial Status.**

Under CADA, it is an “unfair housing practice and unlawful . . . [f]or any person to refuse to . . . rent, or lease, . . . or otherwise make unavailable or deny or withhold from any person such housing because of . . . sex, sexual orientation, . . . [or] familial status . . . .” C.R.S. § 24-34-502(1)(a). It is also illegal for “any person . . . to cause to be made any written or oral inquiry or record concerning the . . . sex, sexual orientation, . . . [or] familial status . . . of a person seeking to purchase, rent, or lease any housing . . . .” *Id.* Discrimination based on transgender status is included within CADA’s definition of sexual orientation discrimination. *See* C.R.S. § 24-34-301.

These prohibitions apply to the “building[s], structure[s], . . . or part[s] thereof” Defendant offered for rent, C.R.S. §§ 24-34-501(2), -301(4.1), and they apply to Defendant, who, as an owner of housing, is a “person” under CADA. C.R.S. § 24-34-501(3). Defendant does not dispute that she owns and offered for rent both (1) the two-bedroom unit and (2) the three-bedroom unit she eventually denied to the Smiths; that she owns and rented (3) the adjoining townhouse to another couple; and (4) that she owns and offered for rent the third freestanding structure as a four-bedroom house. Therefore, CADA’s prohibitions apply here.

1. Defendant Violated CADA by Discriminating Based on Sex.

“Sex” is not defined in CADA, *see* C.R.S. §§ 24-34-301, -501, and no case has interpreted CADA’s definition of sex. However, “federal cases interpreting the Federal Fair Housing Act are persuasive in interpreting” CADA’s sex discrimination prohibition. *See May v. Colorado Civil Rights Comm’n*, 43 P.3d 750, 756 (Colo. App. 2002). As discussed *supra*, the FHA prohibits discrimination on the basis of sex stereotypes, including discrimination because of nonconformity with sex stereotypes about the sex of the person to whom a man or woman should be attracted to, marry, or have children with, and about the gender expression (including how to appear and act) and gender identity a person assigned the sex of male at birth should have. The Court should “liberally construe[]” CADA’s prohibition against sex discrimination in line with HUD’s interpretation and federal cases holding that discrimination based on sex stereotypes is sex discrimination. *See Colorado ex rel. Colo. Civil Rights Comm’n v. Adolph Coors Corp.*, 486 P.2d 43, 46 (Colo. App. 1971) (CADA “should be liberally construed”).<sup>9</sup>

Defendant refused to rent, refused to lease, and otherwise denied, withheld, and made unavailable to Plaintiffs the housing she owned based on unlawful considerations about Tonya and Rachel’s sex. Defendant violated CADA’s proscription on sex discrimination for the same reasons that she violated the FHA’s prohibition on sex discrimination, namely that Defendant refused housing to the Smith family because she did not want to have people that defy sex stereotypes living in her properties. *See* Part III.A.3, *supra*. Similarly, Defendant’s email refusing to rent property to the Smith family because of their “uniqueness” and Tonya and Rachel’s

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<sup>9</sup> That CADA explicitly prohibits Defendant’s discrimination based on Tonya and Rachel’s sexual orientation and transgender status does not alter that Defendant’s discrimination also independently relied on impermissible sex stereotypes. *See Fabian*, 2016 WL 1089178, at \*14 n.12.

“unique relationship” constituted an illegal “written . . . record concerning the sex” of Tonya and Rachel, in violation of C.R.S. § 24-34-502(1)(a). This Court should find Defendant liable to Tonya and Rachel Smith for unlawful discrimination on the basis of sex in violation of CADA.

2. *Defendant Violated CADA by Discriminating Based on Sexual Orientation and Transgender Status.*

Under CADA, housing discrimination on the bases of sexual orientation and transgender status is explicitly unlawful. C.R.S. §§ 24-34-502(1)(a), -301(7). Defendant violated these protections when she refused to rent to Tonya and Rachel due to their “unique relationship” and the Smith family’s “uniqueness.” UF #40-42. The “uniqueness” referenced by these statements includes Tonya and Rachel’s same-sex relationship and Rachel’s female gender identity and expression. Not only does Defendant’s focus on this “uniqueness” demonstrate her perception that Tonya and Rachel defy sex stereotypes, but also her perception that they have a lesbian sexual orientation and that Rachel is transgender, both of which are protected against discrimination under CADA. C.R.S. §§ 24-34-301(7), -502(1)(a). Though conflating Rachel’s transgender identity with simply dressing and acting in a manner traditionally associated with a different sex, Defendant’s disclosure that she decided to refuse housing to the Smiths after consulting a friend who “has a transvestite friend herself,” UF #43, further highlighted her discrimination based on transgender status. Therefore, Defendant’s actions constituted unlawful discrimination on the bases of sexual orientation and transgender status in violation of CADA. *See* C.R.S. §§ 24-34-301(7), -502(1)(a). Additionally, Defendant’s email constitutes an illegal written record concerning Plaintiffs’ sexual orientation and transgender status. *See* C.R.S. § 24-34-502(1)(a). Therefore, this Court should find as a matter of law that Defendant is liable to

Tonya and Rachel Smith for unlawful discrimination on the bases of sexual orientation and transgender status in violation of CADA.

3. *Defendant Violated CADA By Discriminating Based on Familial Status.*

CADA also prohibits housing discrimination based on “familial status,” which is defined to include “one or more individuals, who have not attained eighteen years of age, being domiciled with a parent . . . .” C.R.S. § 24-34-502(1)(a); *id.* at § 24-34-501(1.6). For the same reasons she violated the FHA’s prohibition on familial status discrimination, Defendant violated this provision when she discriminated against the Smith family because they have children. *See* Part III.A.3, *supra*. Defendant’s email discussing the children in the Smith family and Defendant’s refusal to allow children in the two-bedroom unit also constituted an illegal written record concerning Plaintiffs’ familial status. *See* UF #33-34; C.R.S. § 24-34-502(1)(a). Therefore, as a matter of law Defendant is liable to Plaintiffs for unlawful discrimination on the basis of familial status in violation of CADA.

**IV. CONCLUSION**

There is no dispute as to any material fact. Therefore, Plaintiffs respectfully request that this Court enter an order granting summary judgment as to Defendant’s liability only in Plaintiffs’ favor on all claims asserted in the Complaint. (*See* Doc. 1).

Dated on this 16th day of June, 2016.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that, on June 16, 2016, I caused to be electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record, including as follows:

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

Civil Action No.: 1:16-cv-00091-RM-MJW

TONYA SMITH, individually and as next friend and parent of K.S. and I.S.,  
minor children;  
JOSEPH SMITH, a/k/a RACHEL SMITH, individually and as next friend and  
parent of K.S. and I.S., minor children;  
K.S., a minor child; and,  
I.S., a minor child,

Plaintiffs,

vs.

DEEPIKA AVANTI,

Defendant.

**PLAINTIFFS’ SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS**

<b>Plaintiffs’ Undisputed Material Facts and Supporting Evidence</b>	<b>Defendant’s Response / Additional Facts and Supporting Evidence</b>	<b>Plaintiffs’ Reply and Supporting Evidence</b>
1. Tonya and Rachel Smith are two women in a loving, committed relationship.  Ex. 1, Decl. of Tonya Smith (“Smith Decl.”), at ¶ 3.		
2. Rachel Smith is transgender.  Ex. 1, Smith Decl., at ¶ 4.		
3. Tonya Smith and Rachel Smith are married to each other.  Ex. 1, Smith Decl., at ¶ 3; Ex.		

<p>2, Scheduling Order, page 4, Undisputed Fact 1.</p>		
<p>4. Tonya Smith and Rachel Smith have been married for more than five years. Ex. 1, Smith Decl., at ¶ 3.</p>		
<p>5. Tonya Smith and Rachel Smith are the parents of Plaintiffs K.S. and I.S, minor children. Ex. 1, Smith Decl., at ¶ 5; Ex. 2, Scheduling Order, page 4, Undisputed Fact 2.</p>		
<p>6. Plaintiffs are residents of Colorado. Ex. 1, Smith Decl., at ¶ 6.</p>		
<p>7. Defendant resides in Boulder County, Colorado. Answer, at ¶ 20; Ex. 2, Scheduling Order, page 4, Undisputed Fact 3.</p>		
<p>8. Defendant is the owner of real property located at 698 Dixon Road, Gold Hill, Colorado. Answer, at ¶ 22; Ex. 2, Scheduling Order, page 4, Undisputed Fact 4.</p>		
<p>9. There are three free-standing buildings at 698 Dixon Road. Ex. 1, Smith Decl., at ¶ 14; Ex. 2, Scheduling Order, page 4, Undisputed Fact 5.</p>		
<p>10. As of April 2015, the</p>		

<p>buildings on the property at 698 Dixon Road included a first free-standing building that was subdivided into two separate livings spaces (the “divided house” or the “townhouses”); a second free-standing building converted into a 3 room living space; and a third free-standing building that was converted to a fourth living space.</p> <p>Ex. 1, Smith Decl., at ¶ 14.</p>		
<p>11. As of April 25, 2015, Defendant had rented one of the separate living spaces in the divided house at 698 Dixon Road, described as a townhouse, to a couple (Matthew and Chiara).</p> <p>Ex. 1, Smith Decl., at ¶ 15; Ex. 2, Scheduling Order, pages 4-5, Undisputed Facts 6 and 12; Ex. 3; Ex. 4, at 1.</p>		
<p>12. Defendant advertised the other half of the divided house at 698 Dixon Road as a townhouse available for rent for \$1100.</p> <p>Ex. 2, Scheduling Order, pages 4-5, Undisputed Facts 6 and 12; Ex. 3; Ex. 4, at 2.</p>		
<p>13. On April 25, 2015, Defendant had advertised the free-standing building with three rooms as a three room house available for</p>		

<p>rent for \$1600.</p> <p>Ex. 2, Scheduling Order, pages 4-5, Undisputed Facts 6 and 12; Ex. 4, at 2; Ex. 8.</p>		
<p>14. On April 7, 2015, Defendant also advertised a four-bedroom house at 698 Dixon Road as available for rent for \$2450.</p> <p>Ex. 2, Scheduling Order, pages 4-5, Undisputed Fact 6; Ex. 7.</p>		
<p>15. In April 2015, Defendant also advertised as available for rent a two-bedroom house located in Gold Hill for \$1633 and a one-bedroom cottage located in Dixon Road in Gold Hill for \$850.</p> <p>Ex. 2, Scheduling Order, page 4-5, Undisputed Fact 6; Ex. 6; Ex. 9.</p>		
<p>16. In April 2015, the Plaintiffs began searching for a new home when their landlord told them that the property where they lived was being sold.</p> <p>Ex. 1, Smith Decl., at ¶ 7.</p>		
<p>17. In 2015, Defendant posted an advertisement on Craigslist.org, listing for rent approximately 900 square feet including two bedrooms and one bathroom located at 698</p>		

<p>Dixon Road, which was described as a townhouse, for \$1100 per month.</p> <p>Ex. 1, Smith Decl., at ¶ 10; Ex. 2, Scheduling Order, pages 4-5, Undisputed Facts 6 and 7; Ex. 3.</p>		
<p>18. The advertisement stated that the home had two large bedrooms, a new kitchen, a living room, and a bathroom.</p> <p>Ex. 1, Smith Decl., at ¶ 11; Ex. 2, Scheduling Order, pages 4-5, Undisputed Fact 6; Ex. 3.</p>		
<p>19. The advertisement explained that the home would be a “super paradise” for people with young children; that the home was surrounded by property that included a swing set and trampoline, gardens, and hiking trails; that the home had low heating bills because of the way it was built; and that the town of Gold Hill had a two-room “private Waldorf” style public school.</p> <p>Ex. 1, Smith Decl., at ¶ 11; Ex. 2, Scheduling Order, pages 4-5, Undisputed Fact 6; Ex. 3.</p>		
<p>20. The advertisement prompted emails and other interactions between the</p>		

<p>parties. Ex. 1, Smith Decl., at ¶¶ 12-13; Ex. 2, Scheduling Order, page 5, Undisputed Facts 8-10.</p>		
<p>21. On April 24, 2015, Tonya and Rachel found Defendant’s rental advertisement on craigslist.org for a two-bedroom townhouse at 698 Dixon Road, Gold Hill, Colorado.  Ex. 1, Smith Decl., at ¶ 10.</p>		
<p>22. On April 24, 2015, Tonya Smith emailed defendant responding to the listing on Craigslist for the 900 square feet at 698 Dixon Road.  Answer, at ¶ 6; Ex. 1, Smith Decl., at ¶¶ 10, 12; Ex. 2, Scheduling Order, page 5, Undisputed Fact 8.</p>		
<p>23. Tonya’s email in response to the Craigslist ad explained that the Smith family includes herself, her wife Rachel, and their then 5-year-old and 15-month-old sons. It noted how the Smith family “love[s] getting out into nature” and how K.S. “loves school,” “would really thrive in a smaller school with more attention,” and would benefit from a Waldorf-style education. It also</p>		

<p>mentioned that Rachel is transgender.</p> <p>Ex. 2, Scheduling Order, page 5, Undisputed Fact 12; Ex. 4, at 3.</p>		
<p>24. Defendant responded by email that the two-bedroom home was available for rent for \$1,100 per month and that the three-bedroom dwelling was available to rent for \$1,600 per month.</p> <p>Ex. 2, Scheduling Order, page 5, Undisputed Fact 12; Ex. 4, at 2-3.</p>		
<p>25. Defendant asked Tonya to “please send photos of all of you.”</p> <p>Ex. 2, Scheduling Order, page 5, Undisputed Fact 12; Ex. 4, at 2.</p>		
<p>26. Tonya replied to Defendant via email that she thought the two-bedroom place “would be perfect” for them because they prefer smaller spaces, agreed to meet Defendant that evening at 698 Dixon Road, and sent a picture of the entire Smith family, as Defendant had requested.</p> <p>Ex. 2, Scheduling Order, page 5, Undisputed Fact 12; Ex. 4, at 2; Ex. 5.</p>		
<p>27. The parties arranged a meeting at the property for</p>		

<p>later that evening. Ex. 2, Scheduling Order, page 5, Undisputed Fact 12; Ex. 4, at 2-3.</p>		
<p>28. At the meeting, the Smith family viewed both the two-bedroom dwelling in the divided house and the three room dwelling. Answer, at ¶ 36; Ex. 1, Smith Decl., at ¶ 13; Ex. 2, Scheduling Order, page 5, Undisputed Fact 11.</p>		
<p>29. At the meeting, Plaintiffs met Mathew and Chiara, the heterosexual, cis-gender couple that lived with a toddler in the “next door townhouse.” Answer, at ¶ 36; Ex. 1, Smith Decl., at ¶ 15; Ex. 2, Scheduling Order, pages 4-5, Undisputed Fact 6; Ex. 3.</p>		
<p>30. At Defendant’s request, Plaintiffs discussed the possibility of renting the three-bedroom dwelling, which was more expensive, and Plaintiffs told Defendant that in order to afford the three-bedroom house they would need to invite a friend to live with them as a roommate and split the rent. Answer, at ¶ 37; Ex. 1, Smith Decl., at ¶ 16; Ex. 2, Scheduling Order, page 5,</p>		

<p>Undisputed Fact 12; Ex. 4, at 1-2.</p>		
<p>31. At the end of the visit, Plaintiffs reiterated their interest in renting the smaller unit, but they agreed with Defendant that they would be interested in renting the larger unit if their friend agreed to live with them.</p> <p>Ex. 1, Smith Decl., at ¶ 17.</p>		
<p>32. Defendant emailed Tonya Smith twice on the night of April 24, 2015.</p> <p>Ex. 1, Smith Decl., at ¶ 18; Ex. 2, Scheduling Order, page 5, Undisputed Fact 12; Ex. 4, at 1-2.</p>		
<p>33. In the first email, Defendant informed Tonya that they were not welcome to rent the two-bedroom home because of Matt and Chiara’s concerns regarding their children.</p> <p>Ex. 2, Scheduling Order, page 5, Undisputed Fact 12; Ex. 4, at 1-2.</p>		
<p>34. Defendant told Tonya that she “kept asking about your kids and the noise because [she] know[s] how quiet [the couple next door] are . . . [T]hey said the noise was too much so they would prefer the couple next door and</p>		

<p>would welcome you in the larger space in the other home.”</p> <p>Ex. 2, Scheduling Order, page 5, Undisputed Fact 12; Ex. 4, at 1.</p>		
<p>35. Defendant told Tonya that she hoped the Smith’s friend would be able to join them in the three - bedroom dwelling and that it would all work out.</p> <p>Ex. 2, Scheduling Order, page 5, Undisputed Fact 12; Ex. 4, at 1-2.</p>		
<p>36. Defendant emailed Tonya a second time stating that, after speaking with her husband, Defendant decided that they had “kept a low profile and low attention for 30 years and want to continue it this way. But in a small town, like Gold Hill, this would not be possible.”</p> <p>Ex. 2, Scheduling Order, page 5, Undisputed Fact 12; Ex. 4, at 1.</p>		
<p>37. Defendant conveyed that she would not rent either residence to the Smith family because she and her husband “really need to continue [to keep a] low profile.”</p> <p>Ex. 2, Scheduling Order, page 5, Undisputed Fact 12; Ex. 4, at 1.</p>		

<p>38. Tonya responded to Defendant and wrote, “As far as keeping a low profile goes, I’m not quite sure what you mean? It sounded like a town where we would really fit in so I’m confused.”</p> <p>Ex. 2, Scheduling Order, page 5, Undisputed Fact 12; Ex. 4, at 1.</p>		
<p>39. On April 25, 2015, Defendant wrote to Tonya again and refused to rent either of the properties to the Smith family.</p> <p>Ex. 1, Smith Decl., at ¶¶ 18-19; Ex. 2, Scheduling Order, page 5, Undisputed Fact 12; Ex. 4, at 1.</p>		
<p>40. In her email, Defendant wrote, “Your unique relationship would become the town focus, in small towns everyone talks and gossips, all of us would be the most popular subject of town, in this way I could not be [sic] a low profile.”</p> <p>Ex. 2, Scheduling Order, page 5, Undisputed Fact 12; Ex. 4, at 1.</p>		
<p>41. Defendant’s email stated that she did not want to “attract the town attention and there is no way to avoid this having the kids go to school, and I am not sure they would not be</p>		

<p>unincluded [sic] due to your uniqueness.”</p> <p>Ex. 2, Scheduling Order, page 5, Undisputed Fact 12; Ex. 4, at 1.</p>		
<p>42. Defendant’s email also stated that it would be “better” for the Smith family if they were in “larger town,” and emphasized that Plaintiffs’ “uniqueness” would invite “everyone . . . into [Defendant’s] business and it would jeopardize [sic] what I have had [for] 30 years.”</p> <p>Ex. 1, Smith Decl., at ¶ 19; Ex. 2, Scheduling Order, page 5, Undisputed Fact 12; Ex. 4, at 1.</p>		
<p>43. Defendant’s email further explained that in reaching the conclusion that she would not rent any of her properties to the Smith family, she consulted with her husband “who personally would not care but immediately gave [her] this feedback” and with a psychic friend “who gave [her] the same feed back [sic] and has a transvestite friend herself.”</p> <p>Ex. 2, Scheduling Order, page 5, Undisputed Fact 12; Ex. 4, at 1.</p>		
<p>44. After Defendant refused to rent either property to the</p>		

<p>Smith family, she continued her attempts to rent dwellings on the property.</p> <p>Ex. 2, Scheduling Order, pages 4-5, Undisputed Fact 6; Ex. 9.</p>		
<p>45. Plaintiffs searched for housing for several months but were unable to find a rental before they had to move out of their previous apartment.</p> <p>Ex. 1, Smith Decl., at ¶ 22.</p>		
<p>46. Plaintiffs were forced to stay at Rachel’s mother’s house for a week when they lost their previous housing.</p> <p>Ex. 1, Smith Decl., at ¶ 23.</p>		
<p>47. Plaintiffs had to dispose of many possessions because the space in Rachel’s mother’s house was too small and did not provide space to keep the possessions.</p> <p>Ex. 1, Smith Decl., at ¶ 23.</p>		
<p>48. On July 1, 2015, the Smith family moved into a ground-floor apartment in Aurora, Colorado.</p> <p>Ex. 1, Smith Decl., ¶ 24.</p>		
<p>49. This apartment did not meet the needs of the Smith family as well as Defendant’s properties</p>		

<p>would have. Ex. 1, Smith Decl., at ¶ 25.</p>		
<p>50. Defendant’s properties had higher-quality buildings, a better school district, and nicer surroundings than the Aurora apartment. Ex. 1, Smith Decl., at ¶ 25.</p>		
<p>51. It took Rachel an hour to commute to work from the Aurora apartment rather than the twenty minutes it would have taken from Gold Hill. Ex. 1, Smith Decl., at ¶ 26.</p>		
<p>52. Rachel changed jobs in September 2015, but for months she lost valuable time with her family due to the longer commute from the Aurora apartment. Ex. 1, Smith Decl., at ¶ 26.</p>		

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

Civil Action No.: 1:16-cv-00091-RM-MJW

TONYA SMITH, individually and as next friend and parent of K.S. and I.S.,  
minor children;  
JOSEPH SMITH, a/k/a RACHEL SMITH, individually and as next friend and  
parent of K.S. and I.S., minor children;  
K.S., a minor child; and,  
I.S., a minor child,

Plaintiffs,

vs.

DEEPIKA AVANTI,

Defendant.

---

**DECLARATION OF TONYA SMITH IN SUPPORT OF  
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

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I, Tonya Smith, do hereby swear and declare as follows:

1. I am one of the plaintiffs in this action, together with my wife, Rachel Smith, and my children, K.S. and I.S.
2. I am over 18 years of age and, unless specifically noted below, I have personal knowledge of the facts set forth in this Declaration. If called to testify as a witness, I could testify to the matters and facts set forth in this Declaration.
3. Rachel and I are two women in a loving and committed relationship. We have been married for over six years.
4. Rachel is a transgender woman.
5. Rachel and I are the parents of K.S. and I.S, our minor children. K.S. is six years old and I.S. is 2 years old.

6. I live with Rachel and our children in Aurora, Colorado. All four of us were born in Colorado and have lived in Colorado most of our lives.

7. In April 2015, we were told by our prior landlord that the home we lived in would be sold, so we began to look for a new place to live. We searched for a long time and responded to many advertisements, but it was difficult for us to find a home that we could afford and would meet our needs.

8. Rachel and I were searching for a home where we could raise our children close to nature and with a public school where they would be able to get close individual attention and the best education possible.

9. Our family loves getting out into nature and K.S., who loves school, would really thrive in a smaller school with more attention.

10. On April 24, 2015, I found and responded to an advertisement on Craigslist.org listing a 900-square foot two-bedroom home for rent at 698 Dixon Road, Gold Hill, Colorado. The advertisement listed Deepika Avanti, the defendant in this lawsuit, as the contact person.

11. The advertisement stated that the home had two bedrooms, a new kitchen, living room, and bathroom; that it would be a “super paradise” for people with young children because of the “instant playmate” they would have in the 17-month-old living in the townhouse next door; that it was surrounded by nature and hiking trails; and that the town of Gold Hill had a two-room “private Waldorf” style public school. It seemed like an ideal place for us.

12. I emailed back and forth with Ms. Avanti on April 24 and April 25, 2015. True and correct copies of those e-mails are attached to this Declaration as Exhibits.

13. On April 24, 2015, I went with Rachel and my children to meet Ms. Avanti and to see the advertised two-bedroom home at 698 Dixon Road in Gold Hill, Colorado.

14. As of our visit in April 2015, there were three free-standing buildings at 698 Dixon Road. One of those buildings subdivided into two separate living spaces (the “townhouses”). The second free-standing building had been converted into a three-bedroom living space. The third free-standing building was converted to a fourth living space. We viewed the insides of both the advertised two-bedroom dwelling in the divided house and the separate free-standing three-bedroom dwelling.

15. As of our visit in April 25, 2015, we understood that Ms. Avanti had rented the second townhouse in the divided house at 698 Dixon Road to another couple, Matthew and Chiara. At that visit, we met Mathew and Chiara, a heterosexual, cis-gender couple who lived in the second townhouse.

16. At Ms. Avanti’s request, we discussed the possibility of renting the three-bedroom dwelling, even though it was more expensive. We told Ms. Avanti that we would need to invite a friend of ours to live with us as a roommate and split the rent to be able to afford the more expensive three-bedroom house.

17. At the end of our visit, we reiterated to Ms. Avanti that we were interested in renting the smaller unit, but we agreed we also would be interested in renting the larger unit if our friend agreed to live with us.

18. After our visit, however, Ms. Avanti sent us multiple e-mails in which she declined to rent either of the residences to us.

19. In her emails, Ms. Avanti told us she would not rent to us because she was concerned that our “uniqueness” and “unique relationship” would jeopardize her standing in the community.

20. We were stunned and upset by what we were reading. We understood Ms. Avanti’s references to our “uniqueness” and “unique relationship” to be references to how Rachel and I do not conform to Ms. Avanti’s gender stereotypes, in part, because of our same-sex relationship and how Rachel does not express gender and gender identity in a manner typically associated with the sex assigned to her at birth.

21. As our shock turned to fear, we worried about whether we would be able to find a home for our family.

22. After Ms. Avanti denied us the opportunity to rent either of her properties, we searched for housing for several months. Unfortunately, we were unable to find a rental before we had to move out of our previous apartment.

23. As a result, we had to move in temporarily with Rachel’s mother. Rachel’s mother’s home was too small for us to keep all of our belongings, and so we had to get rid of many of our possessions.

24. On July 1, 2015, we finally moved into a ground-floor apartment in Aurora, Colorado, where we presently reside.

25. This apartment does not meet our family’s needs as well as Ms. Avanti’s properties would have. Those properties had higher-quality buildings, a better school district, and nicer surroundings than the Aurora apartment where we live now.

26. When we first moved, it took Rachel an hour to commute to work from the Aurora apartment rather than the twenty minutes it would have taken from Gold Hill. Rachel eventually changed jobs in September 2015 and her new job is closer to us in Aurora, but for months she was not able to spend as much time with us as she would have been able to because of her longer commute.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Dated: June 15, 2016

  
Tonya Smith

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

Civil Action No.: 16-cv-00091-RM-MJW

TONYA SMITH, individually and as next friend and parent of K.S. and I.S.,  
minor children;  
JOSEPH SMITH, a/k/a RACHEL SMITH, individually and as next friend and  
parent of K.S. and I.S., minor children;  
K.S., a minor child; and,  
I.S., a minor child,

Plaintiffs,

vs.

DEEPIKA AVANTI,

Defendant.

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**SCHEDULING ORDER**

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**1. DATE OF CONFERENCE AND  
APPEARANCES OF COUNSEL AND PRO SE PARTIES**

The Scheduling/Planning Conference required under Fed. R. Civ. P. 16 and Local Rule 16.1 is scheduled for March 17, 2016 at 10:00 a.m. before United States Magistrate Judge Michael J. Watanabe, in Courtroom A-502 on the Fifth Floor of the Alfred A. Arraj U.S. Courthouse, 901 19th Street, Denver, Colorado 80294. Appearing for the parties are:

For Plaintiffs:

- a. Omar Gonzalez-Pagan, Lambda Legal Defense and Education Fund, Inc., 120 Wall Street, 19th Floor, New York, New York 10005, telephone: (212) 809-8585, email: [ogonzalez-pagan@lambdalegal.org](mailto:ogonzalez-pagan@lambdalegal.org);

denies she discriminated against the Plaintiffs on the basis of their gender, sexual orientation or their familial status when she declined to rent her house to the Plaintiffs. For her defenses, Defendant asserts that Plaintiff's Complaint fails to state a claim upon which relief may be granted; Defendant is exempt from Plaintiffs' claims under the Fair Housing Act under 42 U.S.C. § 3603 and under the Colorado Anti-Discrimination Action under C.R.S. § 24-34-502; Plaintiffs do not qualify as a protected class under the Fair Housing Act; all actions taken by Defendant were for legitimate, non-discriminatory reasons; Defendant would have made the same decisions with respect to the Plaintiffs notwithstanding their sex, sexual orientation, or familial status; Plaintiffs' claim for punitive damages is barred as a matter of law; and Plaintiffs' injuries, if any, were the result of the actions of Plaintiffs or third parties over whom Defendant had no control or right of control.

**4. UNDISPUTED FACTS**

The following facts are undisputed:

1. Plaintiffs Tonya Smith and Rachel Smith are married to each other.
2. Plaintiffs Tonya and Rachel Smith are the parents of Plaintiffs K.S. and I.S., minor children.
3. Defendant resides in Boulder County, Colorado.
4. Defendant is the owner of real property located at 698 Dixon Road, Gold Hill, Colorado 80302.
5. There are three free-standing buildings at 698 Dixon Road.
6. The documents Bates marked SMITH 000032 – 000049 are similar to, if not identical to, advertisements posted by Defendant on Craigslist. Defendant states

that she does not recall the exact contents of each post she may have put on Craigslist.

7. In 2015, Defendant posted an advertisement on Craigslist.org, listing for rent approximately 900 square feet including two bedrooms and one bathroom located at 698 Dixon Road for \$1100 per month.
8. On April 24, 2015, Plaintiff Tonya Smith emailed Defendant responding to the listing on Craigslist for the 900 square feet at 698 Dixon Road.
9. On April 24, 2015, Defendant responded via email and proposed to meet with Plaintiffs.
10. On April 24, 2015, Plaintiffs and Defendant met at 698 Dixon Road.
11. While at 698 Dixon Road, Defendant also showed Plaintiffs another of the buildings at 698 Dixon Road, which she was also trying to rent.
12. The documents Bates marked SMITH 000001 – 000031 are similar to, if not identical to, the email communications between Plaintiffs and Defendant. Defendant states that she does not recall the exact contents of the email communications that the parties exchanged.
13. Defendant did not rent any portion of any building at 698 Dixon Road to Plaintiffs.

## 5. COMPUTATION OF DAMAGES

Plaintiffs have reasonably calculated their non-economic damages flowing from Defendant's conduct to be approximately \$40,000, relating to the embarrassment, humiliation, emotional distress, stigmatic injury, loss of parenting time, and loss of educational opportunity

**12. NOTICE TO COUNSEL AND PRO SE PARTIES**

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1(c) by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1(a).

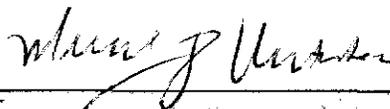
Counsel and unrepresented parties are reminded that any change of contact information must be reported and filed with the Court pursuant to the applicable local rule.

**13. AMENDMENTS TO SCHEDULING ORDER**

The scheduling order may be altered or amended only upon a showing of good cause.

DATED at Denver, Colorado, this 17<sup>th</sup> day of March, 2016.

BY THE COURT:



**MICHAEL J. WATANABE  
U.S. MAGISTRATE JUDGE  
DISTRICT OF COLORADO**

**APPROVED BY:**

**LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.**

/s/ Omar Gonzalez-Pagan  
Omar Gonzalez-Pagan

/s/ Karen L. Loewy  
Karen L. Loewy

120 Wall Street, 19th Floor  
New York, New York 10005  
t: (212) 809-8585 | f: (212) 809-0055  
[ogonzalez-pagan@lambdalegal.org](mailto:ogonzalez-pagan@lambdalegal.org)  
[kloewy@lambdalegal.org](mailto:kloewy@lambdalegal.org)

**HOLLAND & HART, LLP**

/s/ Benjamin N. Simler  
Benjamin N. Simler

/s/ Matthew P. Castelli  
Matthew P. Castelli

Post Office Box 8749  
Denver, Colorado 80201-8749  
t: (303) 295-8000 | f: (303) 295-8213  
[bnsimler@hollandhart.com](mailto:bnsimler@hollandhart.com)  
[MPCastelli@hollandhart.com](mailto:MPCastelli@hollandhart.com)

*Attorneys for Plaintiffs*

**BERG HILL GREENLEAF RUSCITTI, LLP**

/s/ Jason T. Pink  
Jason T. Pink

/s/ Melanie B. Lewis  
Melanie B. Lewis

1712 Pearl Street  
Boulder, Colorado 80302  
t: (303) 402-1600 | f: (303) 303-402-1601  
[jtp@bhgrlaw.com](mailto:jtp@bhgrlaw.com)  
[mbl@bhgrlaw.com](mailto:mbl@bhgrlaw.com)

*Attorneys for Defendant*

**EXHIBIT 3**

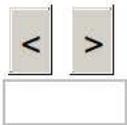
- [CL](#)
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[reply](#)  
[x prohibited](#)<sup>[2]</sup>

Posted: 2015-01-22 5:42pm

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**\$1100 / 2br - 900ft<sup>2</sup> - Love a new dream house?  
 Windows? Light? Views? Friends nearby? Trails? (698  
 Dixon Rd)**



**698 Dixon Rd**

[\(google map\)](#) [\(yahoo map\)](#)

**2BR / 1Ba 900ft<sup>2</sup> townhouse** available feb 01  
 w/d hookups off-street parking  
 no smoking  
 dogs are OK - woof

It is the best of all worlds if you love a new home, new everything in it, love a super amount of south light and all around windows with mountain and city views, love peace and quiet, plus love the coos of a 17 month old baby in the **next door townhouse**, (if you have an infant, **this will be super paradise with next door playmate**) love creative spiritual health oriented neighbors that are super sweet and quiet living style, love sitting on your own patio looking out on 3 acres **surrounded by meadows of grass, flowers, a veggie garden, Zen garden with pools, trampoline, swing set, and lots of trails for hiking** (a 1/2 mile walk to see the entire divide). If this fits you, you will feel like a queen or king in this house that I built as my dream

**SMITH 00032**

palace that is super affordable.

Feel great living in this gorgeous new beautiful stucco home with new kitchen, new tile floor, tile bathroom, large bedrooms, living room kitchen filled with big windows lining the south. Feel healthy with so much light from all the windows. Be happy for low heat bills with the radiant water heat and a super, super insulated house.. We only heated it a few weeks building it because it is so tight and has so much passive solar heat plus all the beautiful tiles holding the heat. I have one request, I am a very sensitive healer and some decade, may want to live in this house so I can't have pot grown or smoked inside the house for it imbalances my body so I can't do psychic healing.

Also do you love community, blue grass live music at the Gold Hill Inn 4 times a week, a 2 room "private Waldorf" public grade school, a store with lunches, an inn with awesome dinners, then welcome to Gold Hill.

Boulder's Broadway and Pearl is 25 minutes away via pavement and 4 miles of dirt roads only requiring front wheel drive. Roads are plowed at 6 am for the school bus and again at 4pm. It is a beautiful drive that is the same time as going from north Boulder to Table Mesa. If mountains sing your heart on a daily basis, you will feel like a king or a queen and be in love. I am a healer (see [www.holistichealthforall.com](http://www.holistichealthforall.com)), the owner, and builder with my husband. We live next door! and have enjoyed king queen living for 28 years and my husband 45 years. Come join us!

- do NOT contact me with unsolicited services or offers

post id: 4859224518

posted: 2015-01-22 5:42pm

updated: 2015-01-22 6:56pm

[email to friend](#)

[\\_best of](#) <sup>[?]</sup>

Please flag [discriminatory housing ads](#)

[Avoid scams, deal locally!](#) *DO NOT wire funds (e.g. Western Union), or buy/rent sight unseen*

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- desktop

**SMITH 000033**

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## Image Gallery:

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[http://images.craigslist.org/00k0k\\_fDavfr1IDn3\\_600x450.jpg](http://images.craigslist.org/00k0k_fDavfr1IDn3_600x450.jpg)



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## Reply:

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**preferred contact method:**

- email or phone

**contact name:**

- Deepika Avanti

**contact by phone:**

- 3034404431

**reply by email:**

- [deepika@holistictherapiesinc.com](mailto:deepika@holistictherapiesinc.com)

**webmail links:**

- [gmail](#)
- [yahoo mail](#)
- [hotmail, outlook, live mail](#)
- [aol mail](#)

**copy and paste into your email:**

- deepika@holistictherapiesinc.com

**From:** Deepika Avanti <deepika@holistictherapiesinc.com>  
**Sent:** Saturday, April 25, 2015 9:13 AM  
**To:** Tonya Smith  
**Subject:** Re: Love a new dream house? Windows? Light? Views? Friends nearby? Trails?

Hi Tonya,

Your unique relationship would become the town focus, in small towns everyone talks and gossips, all of us would be the most popular subject of town, in this way, I could not be a low profile. Personally, I am fine with you all, but I need a low profile and not to attract the town attention and there is no way to avoid this having the kids go to the school, and I am not sure that they would not be uninvited due to your uniqueness. In this way, it is better to be larger town. I am sorry, I talked to my husband who personally would not care, but immediately gave me this feedback and a psychic friend who gave me the same feedback and has a transvestite friend herself. Boulder Co has no more than 3 unrelated people on a property, I need a low profile to have community and everyone would be into my business with your uniqueness and it would jeopardize what I have had 30 years. I am sorry. God bless you for the perfect situation.  
Deepika

On Sat, Apr 25, 2015 at 9:04 AM, Tonya Smith <[twinkie925@gmail.com](mailto:twinkie925@gmail.com)> wrote:

Hi Deepika,

I've talked to our friend, and she isn't sure what her situation is. She was planning on taking a couple days to think about it and do some planning and get back to us. As far as keeping a low profile goes, I'm not quite sure what you mean? It sounded like a town where we would really fit in so I'm confused.

On Fri, Apr 24, 2015 at 11:59 PM, Deepika Avanti <[deepika@holistictherapiesinc.com](mailto:deepika@holistictherapiesinc.com)> wrote:

Hi Tonya,

I talked to my husband. We have kept a low profile and low attention for 30 years and want to continue it this way. But in a small town, like Gold Hill, this would not be possible. It seemed like a fit in many other ways, and I'd love to have you here, but we really need to continue low profile. I appreciate meeting you, good luck and God bless,  
Deepika

On Fri, Apr 24, 2015 at 8:16 PM, Deepika Avanti <[deepika@holistictherapiesinc.com](mailto:deepika@holistictherapiesinc.com)> wrote:

Hi Tonya,

I kept asking you about your kids and the noise because I know how quiet Mathew and Chiara are and he is a full time student right now. Later I talked to Mathew and Chiara, they said the noise was too much so they would prefer the couple next door and would welcome you in the larger space in the other home. Given this feedback, I hope that your friend would like to join you in living in the mountains in the larger space, please check out this option and let me know. I am hoping to create a win win for all of us. I enjoyed meeting you and your kids, all of you are very nice.

I hope it all works out.

Thanks,  
Deepika

On Fri, Apr 24, 2015 at 6:18 PM, Tonya Smith <[twinkie925@gmail.com](mailto:twinkie925@gmail.com)> wrote:

Hi Deepika,

We are here, but not sure which house. We're at 698 Dixon and we're parked next to a blue Volvo. My phone number is [720-525-9020](tel:720-525-9020). We have a Honda CRV, it's pretty good in the snow

On Apr 24, 2015 5:24 PM, "deepika Avanti" <[deepika@holistictherapiesinc.com](mailto:deepika@holistictherapiesinc.com)> wrote:

I am out in louisville

It will take me 45 minutes

Do you have a phone number?

Do you have a car that drives my s and snow?

Deepika

Sent from my iPhone

On Apr 24, 2015, at 5:02 PM, Tonya Smith <[twinkie925@gmail.com](mailto:twinkie925@gmail.com)> wrote:

We're on the way now! We should be there in about an hour.

On Apr 24, 2015 4:47 PM, "Tonya Smith" <[twinkie925@gmail.com](mailto:twinkie925@gmail.com)> wrote:

Hi Deepika,

I just wanted to give you a heads up that we might be late. Rachel's dentist appointment is running longer than we expected. I'll email you again when we're on the way :)

On Apr 24, 2015 1:58 PM, "Tonya Smith" <[twinkie925@gmail.com](mailto:twinkie925@gmail.com)> wrote:

Dear Deepika,`

Thanks for getting back to us so quickly! It says on the ad that the \$1100 space is a two bedroom house, and I think that would be perfect. In the last year, we've gone from living in what amounted to a studio to a 2 bedroom space in the basement of a large house. The apartment we lived in before I <sup>REDACTED</sup> was born was a 2 bedroom that was about 700 sq.ft. We actually find that we're happier in smaller spaces as opposed to larger ones. It helps us be more mindful of the amount of material things we have, as we really have to prioritize the things that are really useful and bring us joy over stuff that is just...stuff. We spend a lot of time together as a family, and our kids co-sleep with us, so we tend to be concentrated in one space at most times anyway :) We would love to meet tonight at 6! I attached a picture of all us. From left to right it's Rachel, Me, <sup>REDACTED</sup> and K<sup>REDACTED</sup> :). We look forward to meeting you, and we'll see you at 6!

On Fri, Apr 24, 2015 at 1:34 PM, Deepika Avanti <[deepika@holistictherapiesinc.com](mailto:deepika@holistictherapiesinc.com)> wrote:

Hi Tonya,

I would love to help you and your kids,

This place is ready May 1 or before

please send photos of all of you.

I am not sure if the \$1100 space is too small,

would the \$1600 space be affordable?

I know things have been tough and are getting better.

Can you meet tonight at 6 or 7:30 or tomorrow

698 Dixon Rd, Boulder, CO 80302

thanks,  
Deepika

On Fri, Apr 24, 2015 at 1:02 PM, Tonya Smith <[twinkie925@gmail.com](mailto:twinkie925@gmail.com)> wrote:

Hi,

This house sounds perfect for us! We are a family of four, and we're just starting out on our journey. It is me (Tonya), my wife Rachel, and our sons K [REDACTED] (5) and I [REDACTED] (15 months). We're a very close, easy going family. We're quiet (unless we're playing) and we love getting out into nature. My wife recently graduated from college. We've been renting a basement in Erie, but we're ready to strike out on our own and start our new life! Unfortunately, finding housing that works for us has been difficult due to a combination of past financial difficulties that we're working through, as well as the fact that my wife is transgender. As you may imagine, that can make things difficult at times, particularly in terms of a housing search. America is really starting to come around and be accepting of trans\* issues, but it's happening slowly. So far, it does not bode well for our housing search.

To be completely honest with you, we do have bad credit right now. We are working on fixing it. My wife just finished her Bachelor's in Math, and she has a job in Boulder. She does tech support for Turbo Tax, and she may be moving to Apple very soon. We are finally in a place where we are able to start saving money and paying off our debts, but our housing situation is shaky. The owner of the house we're living in is putting her house up for sale this summer, so we need to find somewhere new to go. We have a great history with the homeowner- we've never missed a rent payment, even when she had a financial emergency and had to raise our rent on short notice. Looking for something new has been a painful process thus far - Imagine my delight at finding your Craigslist post!

I can't tell you how much this sounds like our dream home - the house, the property, the school, all of it. My oldest is just finishing up Kindergarten. He loves school, but I think he would really thrive in a smaller school with more attention. I particularly love Waldorf-style education, and I think it would be perfect for him. The property is incredibly gorgeous. I'm an aspiring writer. I've just begun my career, and those views....I can't even tell you. They are inspirational. Walking really helps my thought process, and with so many trails around I feel confident I could get a lot more done than I have been. We'd also be more able to engage in our favorite family past time- hiking! Truth be told, the suburbs are dragging me down. Erie is just not my kind of town. I want to live a peaceful life surrounded by nature and kindred spirits. If you would like, we'd love to come meet you and see the house and the property. I hope to hear from you soon, and I hope you have a wonderful day!

Sincerely,

Tonya, Rachel, K [REDACTED] and I [REDACTED] Smith

<http://boulder.craigslist.org/apa/4967430133.html>

--

Watch gorgeous scenery while meditating with Deepika's video, *Find God, Embracing the Miraculous* by clicking <http://www.youtube.com/playlist?list=PL08D1F73FBEF43826> or [www.holistichealthforall.com](http://www.holistichealthforall.com)

Deepika Avanti  
[303 440 4431](tel:3034404431)

--

Always look on the bright side of life, ta dum, ta dum.

Monty Python, The Life of Brian

--

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Deepika Avanti  
[303 440 4431](tel:3034404431)

**From:** Tonya Smith <twinkie925@gmail.com>  
**Sent:** Friday, April 24, 2015 1:58 PM  
**To:** Deepika Avanti  
**Subject:** Re: Love a new dream house? Windows? Light? Views? Friends nearby? Trails?  
**Attachments:** WIN\_20150424\_133954.JPG

Dear Deepika,`

Thanks for getting back to us so quickly! It says on the ad that the \$1100 space is a two bedroom house, and I think that would be perfect. In the last year, we've gone from living in what amounted to a studio to a 2 bedroom space in the basement of a large house. The apartment we lived in before [REDACTED] was born was a 2 bedroom that was about 700 sq.ft. We actually find that we're happier in smaller spaces as opposed to larger ones. It helps us be more mindful of the amount of material things we have, as we really have to prioritize the things that are really useful and bring us joy over stuff that is just...stuff. We spend a lot of time together as a family, and our kids co-sleep with us, so we tend to be concentrated in one space at most times anyway :) We would love to meet tonight at 6! I attached a picture of all us. From left to right it's Rachel, Me, [REDACTED] and K [REDACTED] :). We look forward to meeting you, and we'll see you at 6!

On Fri, Apr 24, 2015 at 1:34 PM, Deepika Avanti <[deepika@holistictherapiesinc.com](mailto:deepika@holistictherapiesinc.com)> wrote:

Hi Tonya,

I would love to help you and your kids,

This place is ready May 1 or before

please send photos of all of you.

I am not sure if the \$1100 space is too small,

would the \$1600 space be affordable?

I know things have been tough and are getting better.

Can you meet tonight at 6 or 7:30 or tomorrow

698 Dixon Rd, Boulder, CO 80302

thanks,

Deepika

On Fri, Apr 24, 2015 at 1:02 PM, Tonya Smith <[twinkie925@gmail.com](mailto:twinkie925@gmail.com)> wrote:

Hi,

This house sounds perfect for us! We are a family of four, and we're just starting out on our journey. It is me (Tonya), my wife Rachel, and our sons K [REDACTED] (5) and I [REDACTED] (15 months). We're a very close, easy going family. We're quiet (unless we're playing) and we love getting out into nature. My wife recently graduated from college. We've been renting a basement in Erie, but we're ready to strike out on our own and start our new life!

Unfortunately, finding housing that works for us has been difficult due to a combination of past financial difficulties that we're working through, as well as the fact that my wife is transgender. As you may imagine, that can make things difficult at times, particularly in terms of a housing search. America is really starting to come around and be accepting of trans\* issues, but it's happening slowly. So far, it does not bode well for our housing search.

To be completely honest with you, we do have bad credit right now. We are working on fixing it. My wife just finished her Bachelor's in Math, and she has a job in Boulder. She does tech support for Turbo Tax, and she may be moving to Apple very soon. We are finally in a place where we are able to start saving money and paying off our debts, but our housing situation is shaky. The owner of the house we're living in is putting her house up for sale this summer, so we need to find somewhere new to go. We have a great history with the

homeowner- we've never missed a rent payment, even when she had a financial emergency and had to raise our rent on short notice. Looking for something new has been a painful process thus far - Imagine my delight at finding your Craigslist post!

I can't tell you how much this sounds like our dream home - the house, the property, the school, all of it. My oldest is just finishing up Kindergarten. He loves school, but I think he would really thrive in a smaller school with more attention. I particularly love Waldorf-style education, and I think it would be perfect for him. The property is incredibly gorgeous. I'm an aspiring writer. I've just begun my career, and those views....I can't even tell you. They are inspirational. Walking really helps my thought process, and with so many trails around I feel confident I could get a lot more done than I have been. We'd also be more able to engage in our favorite family past time- hiking! Truth be told, the suburbs are dragging me down. Erie is just not my kind of town. I want to live a peaceful life surrounded by nature and kindred spirits. If you would like, we'd love to come meet you and see the house and the property. I hope to hear from you soon, and I hope you have a wonderful day!

Sincerely,

Tonya, Rachel, K [REDACTED] and J [REDACTED] Smith

<http://boulder.craigslist.org/apa/4967430133.html>

--

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Deepika Avanti  
[303 440 4431](tel:3034404431)

--

Always look on the bright side of life, ta dum, ta dum.

Monty Python, The Life of Brian



**SMITH 000006**

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Posted: 2015-04-07 8:54am

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## **\$1633 / 2br - 1400ft<sup>2</sup> - Live and work paradise (Boulder)**

([google map](#)) ([yahoo map](#))

**2BR / 1Ba 1400ft<sup>2</sup>** apartment available may 01  
w/d in unit off-street parking

It is the best of all worlds if you love a new home, new everything in it, love a super amount of south light and all around windows with mountain and city views, love peace and quiet, love creative spiritual health oriented neighbors that are super sweet and quiet living style, love sitting on your own patio looking out on 3 acres surrounded by meadows of grass, flowers, a veggie garden, Zen garden with pools, trampoline, swing set (ideal for parents with kids), and lots of trails for hiking (a 1/2 mile walk to see the entire divide). If this fits you, you will feel like a queen or king in this house that I built as my dream palace that is super affordable.

Feel great living in this gorgeous new beautiful stucco home with new kitchen, new tile floor, tile bathroom, large bedrooms, living room kitchen filled with big windows lining the south. Feel healthy with so much light from all the windows. Be happy for low heat bills with the radiant water heat and a super, super insulated house.. We only heated it a few weeks building it because it is so tight and has so much passive solar heat plus all the beautiful tiles holding the heat. I have one request, I am a very sensitive healer and some decade, may want to live in this house so I can't have pot grown, processed or smoked inside the house for it imbalances my body so I can't do psychic healing. If you have a home based business, there is an opportunity to also rent a large workshop and office space for additional money (no pot businesses).

Do you love community, blue grass live music at the Gold Hill Inn 4 times a week, a store and inn with lunches, dinner, music and liquor and a 2 room "private Waldorf" public grade

**SMITH 000037**

school. All of Gold Hill supports the kids and has many community fund raisers for trips and skiing programs. My dream is to have several kids here to play with each other and go to the Gold Hill school with 35 kids.

Boulder's Broadway and Pearl is 25 minutes away via pavement and 4 miles of dirt roads only requiring front wheel drive. Roads are plowed at 6 am for the school bus and again at 4pm. It is a beautiful drive that is the same time as going from north Boulder to Table Mesa. If mountains sing your heart on a daily basis, you will feel like a king or a queen and be in love. I am a healer (see [www.holistichealthforall.com](http://www.holistichealthforall.com)), the owner, and builder with my husband. We live next door! and have enjoyed king queen living for 28 years and my husband 45 years. Come join us!

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- do NOT contact me with unsolicited services or offers

post id: 4967543979

posted: 2015-04-07 8:54am

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## Reply:

---

### preferred contact method:

- email
- phone

### contact name:

- Deepika Avanti

### contact by phone:

- 3034404431

### reply by email:

- [deepika@holistictherapiesinc.com](mailto:deepika@holistictherapiesinc.com)

### webmail links:

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### copy and paste into your email:

- deepika@holistictherapiesinc.com

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Posted: 2015-04-07 7:42am

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**\$2450 / 4br - 2100ft<sup>2</sup> - Love a new dream house?  
 Windows? Light? Views? Friends nearby? Trails? (698  
 Dixon Rd)**

< >



[\(google map\)](#) [\(yahoo map\)](#)

**4BR / 2Ba 2100ft<sup>2</sup> furnished house** available may 01

w/d hookups off-street parking

no smoking

It is the best of all worlds if you love a new home, new everything in it, love a super amount of south light and all around windows with mountain and city views, love peace and quiet, love creative spiritual health oriented neighbors that are super sweet and quiet living style, love sitting on your own patio looking out on 3 acres surrounded by meadows of grass, flowers, a veggie garden, Zen garden with pools, trampoline, swing set (ideal for parents with kids), and lots of trails for hiking (a 1/2 mile walk to see the entire divide). If this fits you, you will feel like a queen or king in this house that I built as my dream palace that is super affordable.

Feel great living in this gorgeous new beautiful stucco home with new kitchen, new tile floor, tile bathroom, large bedrooms, living room kitchen filled with big windows lining the south. Feel healthy with so much light from all the windows. Be happy for low heat bills with the radiant water heat and a super, super insulated house.. We only heated it a few weeks

**SMITH 000040**

building it because it is so tight and has so much passive solar heat plus all the beautiful tiles holding the heat. I have one request, I am a very sensitive healer and some decade, may want to live in this house so I can't have pot grown, processed or smoked inside the house for it imbalances my body so I can't do psychic healing. If you have a home based business, there is an opportunity to also rent a large workshop and office space for additional money (no pot businesses).

Do you love community, blue grass live music at the Gold Hill Inn 4 times a week, a store and inn with lunches, dinner, music and liquor and a 2 room "private Waldorf" public grade school. All of Gold Hill supports the kids and has many community fund raisers for trips and skiing programs. My dream is to have several kids here to play with each other and go to the Gold Hill school with 35 kids.

Boulder's Broadway and Pearl is 25 minutes away via pavement and 4 miles of dirt roads only requiring front wheel drive. Roads are plowed at 6 am for the school bus and again at 4pm. It is a beautiful drive that is the same time as going from north Boulder to Table Mesa. If mountains sing your heart on a daily basis, you will feel like a king or a queen and be in love. I am a healer (see [www.holistichealthforall.com](http://www.holistichealthforall.com)), the owner, and builder with my husband. We live next door! and have enjoyed king queen living for 28 years and my husband 45 years. Come join us!

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**SMITH 000041**

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## Image Gallery:

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## Reply:

---

### preferred contact method:

- email
- phone

### contact name:

- Deepika Avanti

### contact by phone:

- 3034404431

### reply by email:

- [deepika@holistictherapiesinc.com](mailto:deepika@holistictherapiesinc.com)

### webmail links:

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### copy and paste into your email:

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Posted: 2015-04-25 7:03am

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## **\$1600 / 1400ft<sup>2</sup> - Live/work mountain paradise in 25 min to Boulder (10 miles west of Boulder, Gold Hill)**

< >


**Dixon Rd**

[\(google map\)](#) [\(yahoo map\)](#)

**0BR / 1Ba 1400ft<sup>2</sup> house** available may 01  
w/d in unit off-street parking  
cats are OK - purrr

Do you love to work out of your private home in the mountains and have lots of light shining in with views of Sugar Loaf? This new 1400 sq. ft. space has 550 sq. foot room, and another 550 sq. ft. with kitchen living space and 2 bedrooms upstairs (300 sq. ft). Do you also love the peace and quiet of 3 acres in the mountains with fields of flowers, space for garden, chickens, trails for hiking and skiing (a 1/2 mile walk to see the entire divide).? Do you love neighbors that are creative spiritual health oriented neighbors and a town that is a community with blue grass music three times a week May to Dec., one to two times a month to May? If you have a child, Gold Hill supports the kids and has a Waldorf like public school where 35 children thrive like my child did. If this fits you, you will feel like a queen or king in this house that I built as my dream palace that is super affordable.

Feel great living in this gorgeous new beautiful stucco home with new kitchen, stained  
**SMITH 000044**

concrete floor, bathroom, small upstairs bedrooms, living room kitchen filled with big windows lining the south. Feel healthy with so much light from all the windows. Be happy for low heat bills with the radiant water heat and a super, super insulated house.. We only heated it a few weeks building it because it is so tight and has so much passive solar heat plus all the beautiful tiles holding the heat. I have one request, I am a very sensitive healer and some day, I may want to live in this house so I can't have pot grown, processed or smoked inside the house for it imbalances my body so I can't do psychic healing.

Boulder's Broadway and Pearl is 25 minutes away via pavement and 4 miles of dirt roads only requiring front wheel drive. Roads are plowed at 6 am for the school bus and again at 4pm. It is a beautiful drive that is the same time as going from north Boulder to Table Mesa. If mountains sing your heart on a daily basis, you will feel like a king or a queen and be in love. I am a healer (see [www.holistichealthforall.com](http://www.holistichealthforall.com)), the owner, and builder with my husband. We live next door! and have enjoyed king queen living for 28 years and my husband 45 years. Come join us!

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## Reply:

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### preferred contact method:

- email
- phone

### contact name:

- Deepika Avanti

### contact by phone:

- 3034404431

### reply by email:

- [deepika@holistictherapiesinc.com](mailto:deepika@holistictherapiesinc.com)

### webmail links:

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### copy and paste into your email:

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Posted: 2015-04-28 3:05pm

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**\$850 / 1br - 650ft<sup>2</sup> - Dream Cottage for single (+1/4 ?)**  
**(Dixon Rd Gold Hill)**

< >

**Dixon Rd**

[\(google map\)](#) [\(yahoo map\)](#)

**1BR / 1Ba 650ft<sup>2</sup>** cottage/cabin available may 01  
w/d hookups off-street parking  
no smoking

This gorgeous well insulated, new stucco cottage is perfect for a single person and perhaps an infant. Do you love to work out of your private home in the mountains and have all passive solar windows on the south with light shining in and views of Sugar Loaf, Green Mountain and Boulder? It is an open studio with bedroom area, kitchen living space and bathroom with stained orange tan concrete floor. Love cheap natural heat, this baby holds the heat in winter, so cheap utilities if you live in a swim suit in winter when the light shines in the most, summer light is overhead so it is cool. Do you also love the peace and quiet of 3 acres in the mountains with fields of flowers, space for garden, chickens, trails for hiking and skiing (a 1/2 mile walk to see the entire divide).? Do you love neighbors that are creative spiritual health oriented neighbors and a town that is a community with blue grass music three times a week May to Dec., one to two times a month to May? Gold Hill centers around a Waldorf like public school where 35 children thrive like my child did. If this fits you, you will feel like a queen or

**SMITH 000047**

king in this house.

Boulder's Broadway and Pearl is 25 minutes away via pavement and 4 miles of dirt roads only requiring front wheel drive. Roads are plowed at 6 am for the school bus and again at 4pm. It is a beautiful drive that is the same time as going from north Boulder to Table Mesa. If mountains sing your heart on a daily basis, you will feel like a king or a queen and be in love. I am a healer (see [www.holistichealthforall.com](http://www.holistichealthforall.com)), the owner, and builder with my husband. We live next door! and have enjoyed king queen living for 28 years and my husband 45 years. Come join us! (unless you are into growing, processing, smoking pot, as a psychic healer, this is not good for me).

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post id: 5000735137

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## Reply:

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### preferred contact method:

- email
- phone

### contact name:

- Deepika Avanti

### contact by phone:

- 3034404431

### reply by email:

- [deepika@holistictherapiesinc.com](mailto:deepika@holistictherapiesinc.com)

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### copy and paste into your email:

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