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Equal Employment Opportunity Commission v. Merrill Gardens, LLC

Judge Theresa L. Springmann

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Equal Employment Opportunity Commission v. Merrill Gardens, LLC

Keywords

EEOC, Merrill Gardens Inc., 1:05-CV-4-TLS, Consent Decree, Disparate Treatment, Hiring, Race, Asian, American Indian, Asian, Black, Hispanic, Native Hawaiian, Healthcare, Employment Law, Title VII

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 1:05-CV-4-TLS
)	
MERRILL GARDENS, LLC,)	
)	
Defendant.)	

ENTRY OF CONSENT DECREE

PART ONE: GENERAL PROVISIONS

SECTION 101 Introduction

The Equal Employment Opportunity Commission (the “Commission” or the “EEOC”) instituted this action, Civil Action No. 1:05-CV-004 (the “EEOC Action”), under the authority granted by Sections 706(f)(1) and (3) and 707 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) and 26 (“Title VII”); and Section 102 of Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The EEOC’s action was brought to correct alleged unlawful employment practices on the basis of race. The EEOC’s Complaint and Amended Complaint allege that Merrill Gardens LLC (“Merrill Gardens”) had a pattern or practice of refusing to hire non-Caucasians because of their race and/or color, in violation of Sections 703(a) of Title VII, 42 U.S.C. § 2000e-2(a); alleged that Merrill Gardens failed, in

violation of Section 709(c), 42 U.S.C. § 2000e-8(c), to make and preserve records relevant to the determination of whether unlawful employment practices have been or are being committed; and sought appropriate relief for Caroline Aduro, Samantha Bolden, Jaela Brownlee, Debra Edwards, William Anthony Hill, Elizebeth Worthman, and a class of non-Caucasian individuals who were adversely affected by the alleged unlawful employment practices.

Two of the individuals on whose behalf the EEOC brought this action, William Anthony Hill and Elizebeth Worthman, previously filed a class-action complaint in Civil Action No. 1:04-CV-248 (the “Hill Action”) on behalf of themselves and others allegedly similarly situated. Specifically, they brought that action on behalf of individuals who were allegedly denied employment with Merrill Gardens because of their race/color, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981.

This Consent Decree and a Class Action Settlement in the Hill Action were negotiated together and are designed, in part, to provide final and preclusive effect to the race claims that were raised in Civil Action Nos. 1:05-CV-004 and 1:04-CV-248 (collectively the “Litigation”). The Consent Decree and Class Action Settlement were preliminarily approved by the Court on June 20, 2005. A Class Action Settlement in the Hill Action has now been approved contemporaneously with the final submission of this Consent Decree.

SECTION 102 Jurisdiction

The Parties hereby stipulate to the jurisdiction of the Court over the Parties and the subject matter now and for the duration of this Agreement (including any extensions thereof),

that venue is proper, and that all administrative prerequisites have been met. The Court finds, based on the pleadings and the record as a whole, that the Court has jurisdiction over the Parties and the subject matter of this action, that venue is proper, and that all administrative prerequisites have been met.

SECTION 103 The Effective Date and Duration of the Consent Decree

A. “Effective Date” of the Consent Decree shall mean the day on which the Order finally approving this Consent Decree becomes final. The Parties have submitted a proposed form of order (Order Granting Final Approval to Class Action Settlement, Entry of Final Judgment, and Entry of Consent Decree). For purposes of this Consent Decree, Agreement, the Final Order shall be deemed to become final on the later of (a) the day following the date on which the Final Order is no longer subject to review by appeal if no notice of appeal, motion to correct errors, or similar motion or notice is filed; or (b) if any such notices or motion is filed, the day following the date on which the Final Order is not subject to further judicial review or appeal, either by reason of affirmance by a court of last resort or by lapse of time or otherwise.

B. Unless extended by the Court for good cause, the Consent Decree shall continue in force and effect for a period of forty-two (42) months from the Court’s issuance of the Stipulated Order Granting Preliminary Approval to Consent Decree, Class Action Settlement, and Conditional Class Certification (“Preliminary Approval Order”). Prior to the expiration of the Consent Decree, either party may move the Court for an extension of the obligations of any part of the Consent Decree that such party contends have not been complied with or completed, and the Consent Decree shall remain in effect only as to such provisions until the Court rules on

the motion or otherwise orders.

C. The Court will retain jurisdiction of this cause throughout the period of this Consent Decree, and any extensions thereof, for purposes of monitoring compliance with the Consent Decree and entry of such further orders or modifications as may be necessary or appropriate.

PART TWO: RELIEF

SECTION 201 Notice of Non-Discrimination

Merrill Gardens affirms that, commencing within seven (7) calendar days following the Preliminary Approval Order, Merrill Gardens posted in conspicuous locations visible to applicants and employees throughout its Fort Wayne facility a Notice of Non-Discrimination, attached as Attachment A. Said notices shall remain posted throughout the term of this Consent Decree.

SECTION 202 Notice of Non-Discrimination in Hiring

Merrill Gardens affirms that, within seven (7) calendar days following the Preliminary Approval Order, Merrill Gardens distributed to each of its General Managers, Regional Directors, Regional Vice Presidents, and all other employees with supervisory authority over a facility or multiple facilities a Notice of Non-Discrimination in Hiring, attached as Attachment B. Merrill Gardens shall also distribute this Notice to all General Managers, Regional Directors, Regional Vice Presidents, and all other employees with supervisory authority over a facility or multiple facilities who are hired during the duration of this Consent Decree.

SECTION 203 EEO Training

Within ninety (90) days of the Effective Date of this Agreement, Merrill Gardens will provide Equal Employment Opportunity training to all employees at the Fort Wayne facility. This training will cover, at a minimum, non-discrimination in hiring, procedures to report known or observed discrimination in the workplace, and the non-retaliation provisions of Title VII. Merrill Gardens will provide like training for new hires throughout the term of this Consent Decree.

Thirty (30) days before the training, Merrill Gardens shall provide notice to the Commission of the date, time, and place of the training; and shall send to the Commission a copy of the training program and all written materials, if any, to be used. The Commission may provide reasonable input on the content of the training but shall do so no later than ten (10) days prior to the training.

SECTION 204 EEO Training

Within ninety (90) days of the Effective Date of this Consent Decree, Merrill Gardens agrees to provide Equal Employment Opportunity training to all managers, supervisors, and any other employees who are responsible for any portion of the employment selection or hiring process at the Fort Wayne facility. This training will cover, at a minimum, record retention, non-discrimination in hiring and job assignment, procedures to correct and report known or observed discrimination in the workplace, and the non-retaliations provisions of Title VII. Merrill Gardens will provide like training for all managers and supervisors who are hired for the Fort Wayne facility during the duration of this Consent Decree.

Thirty (30) days before the training, Merrill Gardens shall provide notice to the Commission of the date, time, and place of the training; and shall send to the Commission a copy of the training program and all written materials, if any, to be used. The EEOC may provide reasonable input on the content of the training but shall do so no later than ten (10) days prior to the training.

SECTION 205 EEO Training

Within ninety (90) days of the Effective Date of this Agreement, Merrill Gardens agrees to provide Equal Employment Opportunity training to the General Manager of its Fort Wayne facility, the Regional Dining Services Director (Southeast) and the Vice President of Operations of its MidAtlantic Region. This training will cover, at a minimum, non-discrimination in hiring, procedures to report known or observed discrimination in the workplace, and managerial obligations to oversee the workplace. Merrill Gardens will provide like training for individuals hired into these positions during the duration of this Consent Decree.

Thirty (30) days before the training, Merrill Gardens shall provide notice to the Commission of the date, time, and place of the training; and shall send to the Commission a copy of the training program and all written materials, if any, to be used. The EEOC may provide reasonable input on the content of the training but shall do so no later than ten days prior to the training.

SECTION 206 Policy of Non-Discrimination

Merrill Gardens will not discriminate against any individual on the basis of race and/or

color and will maintain a work environment for all employees that is free from racial discrimination.

Merrill Gardens will not retaliate or discriminate against any of its employees, former employees, or applicants for employment because the individual (a) has made a charge or opposed an unlawful employment practice under Title VII or any of the laws enforced by the EEOC or (b) has assisted or participated in any manner in an investigation, proceeding, or hearing under Title VII or any of the laws enforced by the EEOC.

Merrill Gardens has in place or adopted a policy of non-discrimination consistent with Title VII. The policy prohibits discrimination based on race or color and explains how individuals may lodge a complaint of discrimination, designating and identifying at least one person outside the Fort Wayne facility as an individual responsible to hear and address complaints of discrimination. As part of the training under Sections 203, 204, and 205 above, Merrill Gardens will educate all trainees on the provisions of this non-discrimination policy and will provide a copy of the policy to all trainees. Merrill Gardens will make copies of the policy readily available to anyone desiring to read or copy the policy.

SECTION 207 Application and Hiring Procedures

The following hiring procedures have been followed at Merrill Gardens' Georgetowne Place community since at least August 1, 2005 and will be followed during the term of the Consent Decree:

A. At the time an applicant submits an application at Georgetowne Place, the applicant will sign in on an applicant log sheet, indicating name, address, position(s) applied for,

and the date and time. Applicants may also—on a voluntary basis—indicate their race.

B. Applicant log sheets shall be maintained as confidential employee records. When an applicant signs in on a sheet, the applicant will not be able to read information recorded on the sheet by prior applicants. Further, the applicant log sheets shall not in any way be associated with, or considered in conjunction with, any application for employment.

C. Applications will be reviewed/processed and positions filled, in accordance with the normal business practices of Merrill Gardens except as provided below for Georgetowne Place:

- (i) If the applicant is not interviewed or is interviewed and not offered employment, the deciding official will note the reason(s) for rejection on the applicant log sheet.
- (ii) If the applicant is offered employment, the deciding official will note the job offered on the applicant log sheet. If the job offered is different than the job sought (as per the applicant log sheet), the deciding official will note the reason(s) therefor.

D. Merrill Gardens will retain all applications to Georgetowne Place throughout the duration of this Consent Decree. While retained, the applications will be filed in chronological order.

E. Within sixty (60) days of the Effective Date of this Consent Decree, Merrill Gardens will advise all recruiting sources for its Fort Wayne facility of Georgetowne Place's active Equal Employment Opportunity policy, and specifically will state that the company hires without regard to race and/or color.

F. When it advertises employment opportunities at Georgetowne Place, Merrill Gardens will clearly indicate that the facility is an Equal Employment Opportunity employer and does not discriminate on the basis of race and/or color for any position.

PART THREE: KNOWN CLASS MEMBERS

As partial consideration for this Consent Decree and the Settlement Agreement in the Hill Action, Merrill Gardens will pay Class Members and Class Counsel as provided in this Part, Part Four, and Part Seven.

SECTION 301 Designated Back Pay

Merrill Gardens shall pay \$10,000, minus applicable taxes and withholdings, which will be identified as claimed back pay to each of the following known class members who signed Releases (Attachment C): Caroline Aduro, Samantha Bolden, Jaela Brownlee, Debra Edwards, William Anthony Hill, and Elizebeth Worthman (hereinafter referred to as “Known Class Members”), or to their heirs or assigns in the event of an individual’s death.

SECTION 302 Designated Compensatory Damages

Merrill Gardens shall pay \$50,000, which will be identified as claimed compensatory damages (other than for back pay) to Caroline Aduro, Samantha Bolden, Jaela Brownlee, Debra Edwards, and William Hill. Merrill Gardens shall pay \$14,000 for claimed compensatory damages (other than for wages) to Elizebeth Worthman. To be eligible for payment under this Section, a Known Class Member must sign a Release (Attachment C).

SECTION 303 Releases

Within seven (7) days of issuance of the Preliminary Approval Order, the EEOC sent to Caroline Aduro, Samantha Bolden, Jaela Brownlee, Debra Edwards, William Anthony Hill, and Elizebeth Worthman the Release form attached here to Attachment C, with instructions

regarding the return of executed Releases by no later than seven (7) days before the Fairness Hearing. Each of these individuals was provided the opportunity to discuss, without charge, the release of claims with attorneys John T. Menzie and/or Shane C. Mulholland of the law firm of Burt, Blee, Dixon, Sutton & Bloom, LLP, 200 East Main Street, Suite 1000, Fort Wayne, Indiana.

SECTION 304 Procedures Regarding Known Class Members

The EEOC notified counsel for Merrill Gardens which Known Class Members submitted executed Releases and completed IRS Forms W-4 and caused copies of such documents to be forwarded to counsel for Merrill Gardens. Within fourteen (14) days after the Effective Date of the Final Order, Merrill Gardens shall mail appropriate payments for Known Class Members who have executed Releases via certified mail, payable to eligible Known Class Members, or to any appropriate heir or assign in the event of a Known Class Member's death. Absent alternate acceptable instruction, checks will be sent to the following addresses:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Merrill Gardens shall prepare the checks in amounts determined under Section 301 and 302 above. Applicable taxes and withholdings shall be subtracted from the back pay amounts pursuant to IRS Forms W-4 completed and tendered to Merrill Gardens, and will be reported on appropriate IRS Forms W-2. If a Known Class Member fails to submit a completed IRS Form W-4 with his/her executed Release, then Merrill Gardens will make the maximum tax withholdings as set forth by law. Merrill Gardens will not deduct from any amount the employer's share of any costs, taxes, or social security required by law to be paid by Merrill Gardens. Further, Merrill Gardens will not withhold any amounts from the payments under Section 302 above and shall provide each Class Member at the appropriate time with the appropriate tax-reporting documentation for tax-filing purposes (IRS Forms 1099).

Merrill Gardens offers no tax advice or opinion regarding the tax consequences of the payments to any Class Member.

Merrill Gardens shall promptly mail a copy of the checks and proof of their delivery (signed certified mail receipts) to EEOC and Class Counsel. The EEOC shall promptly provide

Merrill Gardens with original Releases executed by Class Members.

If a Known Class Member did not timely return an executed Release, that individual is ineligible for any payment under this Consent Decree, and any funds that such Class Member would have received shall be split equally among the Unknown Class Members under this Consent Decree and under the Hill Settlement Agreement.

PART FOUR: UNKNOWN CLASS MEMBERS

SECTION 401 Identification of Class Members

The parties agreed to a thirty (30)-day period of notices in publications and on the radio to identify individuals who may claim that they would have been hired at Georgetowne Place, but for their race and/or color. In particular, the parties agreed to the media campaign that is set forth as Exhibit “C” to the Court’s Preliminary Approval Order, Section I.B. Merrill Gardens paid for all advertising costs incurred under this section, to an amount that did not exceed \$70,000.

SECTION 402 Report to EEOC

For any individual who has come forward to Merrill Gardens in response to a notice in the media, Merrill Gardens agreed to provide the EEOC with contact information as soon as possible and by no later than seven (7) days after receiving the information.

SECTION 403 Determination of Unknown Class Members

Unknown Class Members are individuals other than those identified in Part Three who

meet the following definition:

All African Americans and other minorities who: (1) submitted applications for employment at Georgetowne Place, located at 1717 Maplecrest Road, Fort Wayne, Indiana, operated by Merrill Gardens LLC; (2) between February 17, 1998 and April 18, 2005; (3) for vacant positions; (4) and who were denied employment in such vacant position; (5) where the positions were or may have been given to non-minority candidates.

The EEOC made the initial determination as to which individuals appear to meet the definition of Unknown Class Members under this Consent Decree and under the Hill Action Settlement Agreement and has ensured that such individuals received a copy of the Notice that is attached hereto as Attachment E. The EEOC notified Merrill Gardens of each person identified by the EEOC to be Class Members and each person who was issued the Notice attached hereto as Attachment E.

If the EEOC determined that any individual who came forward is not eligible to share in class relief, the EEOC so notified Merrill Gardens two (2) weeks before the Fairness Hearing (Section 408). Merrill Gardens then, within seven (7) days of receiving notice, had the option of alerting the EEOC to any disagreement with the EEOC's determination. Merrill Gardens had the opportunity to lodge an objection with the Court at the Fairness Hearing (Section 408).

SECTION 404 W-4 Forms

The EEOC provided appropriate IRS Forms W-4 to class members who were not known at the time this Consent Decree was negotiated ("Unknown Class Members"). Applicable taxes and withholdings shall be subtracted from the back pay amounts pursuant to IRS Forms W-4 completed and tendered to Merrill Gardens, and if a Unknown Class Member fails to submit an IRS Form W-4, then Merrill Gardens will make the maximum tax withholdings as set forth by

law.

SECTION 405 Monetary Relief to Unknown Class Members

Merrill Gardens will pay \$325,000 to Unknown Class Members as approved in this action and the Hill Action. The \$325,000 will be divided equally among those Unknown Class Members who timely executed releases (Attachment C).

Unknown Class Members were notified as set forth in Paragraphs I.B and Exhibits “C”, “D-1,” and “D-2” of the Preliminary Approval Order.

SECTION 406 Computation of Payments to Unknown Class Members

Since the number of eligible Unknown Class Members allows payments of at least \$10,000 to each Unknown Class Member who executes a Release, \$10,000 will be identified as claimed back pay. The remainder will be identified as claimed compensatory damages (other than back pay).

SECTION 407 Notice

Within twenty-one (21) days of completion of the media campaign pursuant to Section 401 above, the EEOC provided the Court and Merrill Gardens a list of the individuals whom the EEOC determined should share in class relief. At the same time, the EEOC sent (1) notices to the putative class members, stating that the EEOC has identified them as class members and estimating the amount to which they will be entitled under Section 406 above and (2) notices to claimants the EEOC determined were not eligible for class relief. The notices to

all individuals told them that the Court would conduct a Fairness Hearing and if they disagreed as to their class status or proposed award, they needed to send a letter to the Court stating their objection and the reasons therefor by September 2, 2005.

SECTION 408 Fairness Hearing for Class Members

At the same time as the Fairness Hearing on the related proposed Class Action Settlement in the Hill Action, the Court conducted a Fairness Hearing to hear and decide any objection from Merrill Gardens under Section 403 and to hear and decide any objection from an individual under Section 407. The Court has made or will make all final decisions regarding Class Members and amounts of any payments to them.

SECTION 409 Distributions

At least thirty (30) days (or as soon as practical) before the Fairness Hearing, the EEOC sent each individual who may be entitled to monetary relief a Release (Attachment C). Each of these individuals was provided the opportunity to discuss the release of claims with attorneys John T. Menzie and/or Shane C. Mulholland of the law firm of Burt, Blee, Dixon, Sutton & Bloom, LLP, 200 East Main Street, Suite 1000, Fort Wayne, Indiana.

The EEOC notified counsel for Merrill Gardens when it received executed Releases and forwarded copies of them to counsel. All EEOC-approved Unknown Class Members returned executed Releases.

Within twenty (20) days after the Effective Date of the Final Order, Merrill Gardens shall mail checks, payable to the individuals, or to their heirs or assigns in the event of an individual's

death, by certified mail to individuals who have executed Releases. Merrill Gardens shall prepare the checks in amounts calculated under Section 406 above, with any modifications ordered by the Court. Applicable taxes and withholdings shall be subtracted from back pay amounts, for which appropriate IRS Forms W-2 will be issued. Merrill Gardens will not deduct from any amount the employer's share of any costs, taxes, or social security required by law to be paid by Merrill Gardens. Further, Merrill Gardens will not withhold any amounts from payments for claimed compensatory damages other than back pay, and will issue appropriate IRS Forms 1099 for such claimed compensatory damages.

Merrill Gardens shall promptly mail a copy of the checks and proof of their delivery (signed certified mail receipts) to the Commission. The EEOC shall promptly provide Merrill Gardens with original Releases executed by Class Members.

PART FIVE: RETENTION OF RECORDS

SECTION 501 Retention of Records

Merrill Gardens agrees to maintain all employment records at Georgetowne Place as required by Section 709(c) of Title VII, 42 U.S.C. § 2000e-8(c), and regulations implementing Section 709(c), 29 C.F.R. Part 1602.

SECTION 502 Review of Records

Merrill Gardens will maintain for the duration of this Consent Decree applications as specified in Section 207 above. From time to time, the Commission may request the opportunity to review all, or a specified portion of, these records or any records maintained at Merrill

Gardens' Fort Wayne facility in compliance with Section 501 above. Within two (2) weeks of such a request, Merrill Gardens will make records available to the Commission at Merrill Garden's Fort Wayne facility.

SECTION 503 Section 709(c) Payment

For failure to retain records in accordance with Section 709(c) of Title VII, 42 U.S.C. § 2000e-8(c), and 29 C.F.R. § 1602.14, Merrill Gardens shall pay \$10,000 to the general fund of the United States Treasury within sixty (60) days of the Effective Date of this Consent Decree.

PART SIX: REPORTING REQUIREMENTS

SECTION 601 Compliance with Decree

In addition to the proofs of payment provided in Sections 304 and 409 above and the reports required by Section 402 above, Merrill Gardens will submit a report to the EEOC detailing compliance with this Consent Decree on or before January 21, 2006. Specifically, Merrill Gardens will:

- (i) certify to the EEOC's Regional Attorney that it has complied with Sections 201 and 202 of this Consent Decree, specifying where the notices are posted and to whom they were distributed;
- (ii) notify the EEOC of training, as required by Sections 203, 204, 205, and 206; and
- (iii) provide the EEOC with a copy of the policy adopted and implemented pursuant to Section 206.

All reports shall be sent to the attention of Laurie A. Young, Regional Attorney, or her successor, Equal Employment Opportunity Commission, 101 West Ohio Street, Suite 1900, Indianapolis IN 46204-4203.

SECTION 602 *Annual Reporting*

Merrill Gardens shall submit three (3) annual reports. The first, due January 21, 2006, may be combined with the report under Section 601. In each report, Merrill Gardens shall include the following information:

- (i) the dates and topics of all training programs offered pursuant to this Consent Decree and provided in the previous period;
- (ii) a copy of all written materials relied on or disseminated at the training programs pursuant to this Consent Decree in the previous period;
- (iii) the name and position of all employees who attended the training programs pursuant to this Consent Decree in the previous period; and
- (iv) all employees hired or promoted at the Fort Wayne facility in the previous period, identified by name, position, date of hire or promotion, and race.

All reports shall be sent to the attention of Laurie A. Young, Regional Attorney, or her successor, Equal Employment Opportunity Commission, 101 West Ohio Street, Suite 1900, Indianapolis IN 46204-4203.

With each annual report identified above, Merrill Gardens will forward to the EEOC all applicant logs constructed in the previous period. Merrill Gardens will send the original logs to the attention of Laurie A. Young, Regional Attorney, or her successor, Equal Employment Opportunity Commission, 101 West Ohio Street, Suite 1900, Indianapolis IN 46204-4203.

PART SEVEN: ADMINISTRATION OF THE CONSENT DECREE

SECTION 701 *Breach of Decree*

The EEOC may review compliance with this Consent Decree. As part of such review at

Merrill Gardens' Fort Wayne facility, the EEOC may inspect the Fort Wayne premises, interview employees at the Fort Wayne premises, and examine and copy documents at the Fort Wayne premises.

In the event that the EEOC alleges that a violation of this Consent Decree has occurred, the EEOC shall give notice in writing specifically identifying the alleged violation to Merrill Gardens. Merrill Gardens will have ten (10) business days in which to investigate and respond to the allegation.

If the Commission elects to seek judicial enforcement, such enforcement action shall be filed in the United States District Court for the Northern District of Indiana, Fort Wayne Division. In any proceeding which seeks enforcement of any provision of the Consent Decree, the remedies shall be limited to enforcement of only those terms or provisions of this Consent Decree then in effect which the Court may find to have been violated, and recovery of court costs.

SECTION 702 Expenses/Labor

A. Merrill Gardens paid all expenses (which did not exceed \$70,000) associated with the advertising detailed in Section 401 above.

B. Each party agrees to provide the necessary labor and to pay for all expenses as needed to fulfill their respective obligations under this Consent Decree.

C. Merrill Gardens has agreed to pay \$100,000 in attorney fees to Burt, Blee, Dixon, Sutton & Bloom, LLP, 200 East Main Street, Suite 1000, Fort Wayne, Indiana, in the Hill Action. This fee will, in part, pay for any services rendered pursuant to Sections 303 and 409

above.

D. Merrill Gardens shall pay Unknown Class Member Golda Bailey the amount of \$1,000 as compensation for her preparation and attendance at the final hearing on behalf of Unknown Class Members.

SECTION 703 Dispute Resolution Procedure

In the event that any dispute arises between the Parties regarding the interpretation or application of this Consent Decree or any provision thereof and the Consent Decree does not provide for its unilateral resolution by one of the parties, the party claiming a dispute (hereinafter “Aggrieved Party”) shall notify the other party (hereinafter “Respondent”) in writing of the nature of the disputed matter, the provision(s) of the Consent Decree to which it relates, and the factual details forming the basis of such dispute. The Respondent shall have ten (10) business days from receipt of the written notice to investigate, correct, or refute the position of the Aggrieved Party; to cure the alleged breach; or to accept the interpretation or contention of the Aggrieved Party. If the Aggrieved Party is not satisfied with the cure, prior to the commencement of a court action for breach of this Consent Decree, the parties shall meet and confer in a joint effort to resolve the dispute. In the event a party does not make itself available for a meeting within ten (10) business days of notice that a satisfactory cure has not been offered, the meeting requirement is waived. All such meetings shall be scheduled at a date and time chosen by mutual agreement of the Parties.

Resort to any of these procedures will not justify the suspension of any other obligation under this Consent Decree. With respect to a dispute, if the Respondent or the Aggrieved Party

determines that, for practical or other reasons, it is more expedient to comply with the other party's position but nevertheless wishes to obtain a judicial determination with respect to the disputed issue, such party may notify the other party that it will accept the other party's position "under protest" and that such party intends to seek judicial relief pursuant to the terms of this Consent Decree. The Court, in its discretion, may award either party some or all of its reasonable costs incurred in seeking enforcement of this Consent Decree.

SECTION 704 Ownership and Control

Sections 201 through 207, 502, 601-602, and 701 (inspection provision only) of the Consent Decree will be in full force and effect and will apply to Merrill Gardens for the duration of the Consent Decree or as long as Merrill Gardens owns the Georgetowne Place community, whichever period is shorter.

SECTION 705 Retention of Jurisdiction

As stated in Section 104(C) above, the Court will retain jurisdiction of this cause throughout the period of this Consent Decree, and any extensions thereof, for purposes of monitoring compliance with the Consent Decree and entry of such further orders or modifications as may be necessary or appropriate.

SO ORDERED on October 4, 2005.

S/ Theresa L. Springmann

THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT

Copies to:

Kenneth L. Bird
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
101 West Ohio Street, Suite 1900
Indianapolis IN 46204-4203

Kathleen M. Anderson
Tiffany L. Gooden
BARNES & THORNBURG LLP
600 One Summit Square
Fort Wayne IN 46802

John T. Menzie
Shane C. Mulholland
Burt, Blee, Dixon, Sutton & Bloom, LLP
200 East Main Street, Suite 1000
Fort Wayne IN 46802

ATTACHMENT A

NOTICE TO EMPLOYEES AND APPLICANTS

Posted Pursuant to an Agreement Resolving a Charge of Employment Discrimination filed with the U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION Indianapolis District Office

This Notice is being distributed and posted by agreement between Merrill Gardens, LLC, and the United States Equal Employment Opportunity Commission, resolving Civil Action No. 1:05-CV-0004 in the United States District Court for the Northern District of Indiana.

Federal law prohibits discrimination against any employee, former employee, or job applicant because of the individual's sex, race, color, religion, national origin, disability, or age (over 40).

Federal law also prohibits retaliation of any kind against any person who has opposed any practice made unlawful under federal law or because an individual has filed a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

Merrill Gardens supports and will comply with federal law in all respects and will not take any actions against employees or applicants because they have exercised their rights under the law. Specifically, Merrill Gardens will not refuse to hire or promote individuals because of their race and/or color. Merrill Gardens agrees to adopt and implement a policy of non-discrimination, will conduct training programs on Title VII, and will not retaliate against any individual who files a charge of discrimination.

If you have any complaints of discrimination, you may contact the EEOC at the address or telephone number given below. An employee or applicant has the right, and is encouraged to exercise that right, to report allegations of employment discrimination in the workplace. An employee or applicant may contact the U. S. Equal Employment Opportunity Commission for the purpose of filing a charge of employment discrimination.

Questions concerning this notice may be addressed to:

Equal Employment Opportunity Commission
101 West Ohio Street, Suite 1900
Indianapolis, Indiana 46204-4203
Telephone: (317) 226-7212
TTY (317) 226-5162

THIS IS AN OFFICIAL NOTICE AND SHALL NOT BE DEFACED BY ANYONE

ATTACHMENT B

**NOTICE TO
MANAGERS, DIRECTORS, AND
VICE PRESIDENTS**

**Distributed Pursuant to an Agreement Resolving a Charge of Employment
Discrimination filed with the
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Indianapolis District Office**

This Notice is being distributed by agreement between Merrill Gardens, LLC, and the United States Equal Employment Opportunity Commission, resolving Civil Action No. 1:05-CV-0004 in the United States District Court for the Northern District of Indiana.

Federal law prohibits discrimination against any employee, former employee, or job applicant because of the individual's sex, race, color, religion, national origin, disability, or age (over 40).

Federal law also prohibits retaliation of any kind against any person who has opposed any practice made unlawful under federal law or because an individual has filed a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

Merrill Gardens supports and will comply with federal law in all respects and will not take any actions against employees or applicants because they have exercised their rights under the law. Specifically, Merrill Gardens will not refuse to hire or promote individuals because of their race and/or color. Merrill Gardens agrees to adopt and implement a policy of non-discrimination, will conduct training programs on Title VII, and will not retaliate against any individual who files a charge of discrimination.

An employee or applicant has the right, and is encouraged to exercise that right, to report allegations of employment discrimination in the workplace. An employee or applicant may contact the U. S. Equal Employment Opportunity Commission for the purpose of filing a charge of employment discrimination.

Questions concerning this notice may be addressed to:

Equal Employment Opportunity Commission
101 West Ohio Street, Suite 1900
Indianapolis, Indiana 46204-4203
Telephone: (317) 226-7212
TTY (317) 226-5162

ATTACHMENT C

RELEASE

A. **DEFINITIONS.** For purposes of this release and waiver (the “Release”), the following terms shall have the meanings set forth below:

1. The “Hill Action” means the lawsuit captioned *Hill, et al. v. Merrill Gardens, LLC*; United States District Court for the Northern District of Indiana, Fort Wayne Division, Case No. 1:04cv248, and all claims that were brought or that could have been brought by William Anthony Hill, Golda Bailey, or any Class Member (who did not opt out) in this Court, in any other Indiana state or federal court, or in or before any Indiana administrative agency, or in any other proceeding, whether brought in an individual or representative capacity regarding any application for employment at Georgetowne Place located at 1717 Maplecrest Road, Fort Wayne, Indiana and owned by Merrill Gardens LLC from February 17, 1998 to April 18, 2005. The definition of “Hill Action” does not, however, include the “EEOC Action,” as defined below.
2. The “EEOC Action” means the lawsuit captioned *EEOC v. Merrill Gardens, LLC*; United States District Court for the Northern District of Indiana, Fort Wayne Division, Case No. 1:05-cv-004.
3. The “Litigation” refers to the Hill Action and the EEOC Action collectively.
4. “Settlement Agreement” means the proposed Settlement Agreement filed in the Hill Action, including any subsequent amendments thereto and any exhibits to any such amendments.
5. “Consent Decree” means the proposed Consent Decree filed in the EEOC Action, including all exhibits.
6. “Class” and “Class Members” mean all African American and other minority applicants for employment at Georgetowne Place, operated by Merrill Gardens LLC, who submitted applications for employment, and who were denied employment in vacant positions from February 17, 1998 to April 18, 2005.
7. “Final Order and Judgment” means the order in the Hill Action finally certifying the Class for settlement purposes only and approving the settlement and the Settlement Agreement, and a final judgment is signed pursuant to that order.
8. “Court” means the United States District Court for the Northern District of Indiana, Fort Wayne Division.
9. “Plaintiff Hill” means William Anthoney Hill.
10. “Plaintiff Bailey” means Golda Bailey.
11. “Class Counsel” means John T. Menzie, Esquire and/or Shane C. Mulholland at the law firm of Burt, Blee, Dixon, Sutton & Bloom, LLP, Suite 1000, 200 East Main Street, Fort Wayne,

Indiana 46802.

12. “Released Parties” means Merrill Gardens LLC and each of its past, present and future parents, subsidiaries, affiliated companies, affiliates, predecessors, successors in interest and assigns, and each of their respective past, present and future officers, directors, employees, attorneys and representatives, or any of them, including any person or entity acting on behalf of or at the direction of any of them.
13. “Consideration” means the consideration approved by the Court in the Final Order and Judgment and as outlined in the Settlement Agreement. The EEOC has estimated that the undersigned Class Member will receive & _____, which is subject to approval and adjustment (lower or higher) by the Court, depending, in part, upon the total number of Class Members deemed eligible for payment.

B. RELEASE TERMS

1. In exchange for the valuable Consideration, Plaintiff Hill, Plaintiff Bailey, and each Class Member who has not opted out of the Hill Action Settlement release and forever discharge the Released Parties from any and all claims or causes of action—known or unknown—that were or could have been asserted in the Litigation regarding applications or requests for employment (or any alleged failure to hire) from February 17, 1998 to April 18, 2005 at Merrill Gardens. As part of this Release, Plaintiff Hill, Plaintiff Bailey, and each Class Member who has not opted out of the Hill Action Settlement release, acquit and forever discharge Released Parties, either directly or indirectly, derivatively, on their own behalf, or on behalf of a class or any other person or entity, any and all causes of action, claims, damages, award, equitable, legal and/or administrative relief, interest, demands, or rights, whether based on federal, state, or local law, statute, contract, common law, or any other source, that have been, could have been, may be or could be alleged or asserted now or in the future by Plaintiff Hill, Plaintiff Bailey, or any Class Member who has not opted out of the Hill Action Settlement against the Released Parties or any of them in the Litigation or in any other court action or proceeding before any administrative body, tribunal, arbitration, panel, or other adjudicatory body arising out of or related to, in whole or in part, applications or requests for employment (or any alleged failure to hire) at Merrill Gardens or its Georgetowne Place facility between February 17, 1998 and April 18, 2005.
2. Without in any way limiting the scope of the Release, this Release covers any and all claims for attorneys’ fees, costs of disbursements in connection with or related in any manner to the Litigation, the settlement of the Litigation and/or the administration of such settlement except to the extent otherwise specified in the Settlement Agreement.
3. In connection with this Release, Plaintiff Hill and each Class Member who has not opted out of the Hill Action Settlement may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, with respect to the matters released in paragraph 1 above. Nevertheless, Plaintiff Hill and each Class Member who has not opted out of the Hill Action Settlement fully, finally, and forever settle and release all matters released in paragraph 1 above.
4. This Release binds Plaintiff Hill and each Class Member who has not opted out of the Hill

Action Settlement and their respective heirs, executors, administrators, successors in interest and assigns.

5. This Release may be raised as a complete defense to, and will preclude, any action or proceedings encompassed by this Release.
6. Nothing in this Release shall preclude any action to enforce the terms of the Settlement Agreement or Consent Decree, including participation in any of the processes detailed therein.
7. The provisions of this Release, individually and collectively, constitute an essential and material term of the Settlement Agreement.
8. This Release is the result of a compromise of a disputed claim and shall never at any time be used as evidence of any admission of liability by Merrill Gardens.
9. This Release shall be interpreted under the laws of the State of Indiana.

The undersigned expressly agrees that the foregoing Release applies to him or her and that the foregoing Release shall take effect upon Final Order and Judgment.

Signature of Class Member

Printed Name of Class Member

Address of Class Member

Telephone Number of Class Member

Social Security Number of Class Member

Please return executed Release to: Kenneth Bird, Equal Employment Opportunity Commission, 101 West Ohio Street, Suite 1900, Indianapolis, Indiana 46204-4203. The executed Release is due by no later than September 2, 2005.