

FILED

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

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STEPHEN R. LUDWIG, CLERK  
U.S. DISTRICT COURT  
FOR THE NORTHERN DISTRICT  
OF INDIANA

WILLIAM ANTHONY HILL, and  
ELIZABETH A. WORTHMAN,  
on Behalf of Themselves and Others  
Similarly Situated,

Plaintiffs,

v.

MERRILL GARDENS, INC., d/b/a  
GEORGETOWN PLACE,

Defendant.

CASE NO. 1 : 04 CV 248 - **TLS**

**Complaint - Class Action**

**CLASS ACTION COMPLAINT**

Comes now William Anthony Hill and Elizabeth A. Worthman (collectively "Plaintiffs"), individually and on behalf of all other persons similarly situated by their undersigned attorneys, for their Class Action Complaint, allege as to themselves and upon information and belief as to all other matters, and state as follows:

**I. NATURE OF THE ACTION**

1. Plaintiffs brings this action as a class action on behalf of themselves and all other persons similarly situated who applied for employment with Merrill Gardens, Inc. ("Defendant") but was denied, because of their race and/or color.

2. This is a proceeding which has been brought pursuant to Title VII of the Civil Rights Act of 1964 42 U.S.C. §2000e *et seq.* ("Title VII") and/or Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. §1981 ("§1981") and all amendments thereto.

3. Plaintiffs bring this action as a class action pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure on behalf of all persons who applied or otherwise sought employment with the Defendant between June 25, 2002 and June 25, 2004 ("Class Period") but were denied because of their race and/or color.

4. The Plaintiffs are named herein as representative of a significantly larger class of individuals who were discriminated against by the Defendant because of their race and/or color. Plaintiffs have been selected because they will fairly and adequately protect the interests of all class members hereto.

5. This matter is being brought as a class action because the proposed class of people is so numerous that joinder of all members is impracticable; there are questions of law or fact common to the class; the claims or defenses of the representative parties are typical of claims or defenses of the class; and the representative parties will fairly and adequately protect the interest of the class.

6. The prosecution of separate actions by or against individual members of the class will create a risk of inconsistent or varying adjudications with respect to the individual class members which will establish incompatible standards of conduct for the Defendant and adjudications with respect to individual class members would, as a practical matter, be dispositive of the interest of other members not parties to the adjudications or substantially impair or impede their ability to protect their interest.

7. Questions of law and/or fact common to the class members predominate over any questions affecting only individual members making a class action the superior method for the fair and efficient adjudication of the instant controversy.

## **II. CLASS ACTION PLAINTIFFS**

7. William Anthony Hill ("Hill") is African-American and a citizen of the United States, and at all material times relevant to the instant action, resided at 5024 Marston Drive, Fort Wayne, County of Allen, State of Indiana 46825.

8 Elizabeth A. Worthman ("Worthman") is African-American and a citizen of the United States, and at all material times relevant to the allegations contained herein, resided at 2928 Trentman Avenue, Fort Wayne, County of Allen, State of Indiana, 46806.

9. Merrill Gardens, Inc. ("Defendant") is a for-profit Indiana Corporation doing business at 1717 Maplecrest Road, Fort Wayne, County of Allen, State of Indiana, 46815; its registered agent is CT Corporation System, 36 South Pennsylvania Street, Indianapolis, Indiana 46204.

10. Defendant, upon information and belief, employs more than fifteen (15) employees throughout each week of the current and preceding calendar year and is an employer pursuant to Title VII and enters into contractual relationships with its employees which deserves protection pursuant to §1981.

11. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on their own behalf and on behalf of all other persons similarly situated including all prospective employees who filled out applications or otherwise sought employment with the Defendant, but, were denied because of their race/color; and on behalf of all other persons who were dissuaded from applying or otherwise seeking employment with the Defendant because of their policy and practice of denying African-American consideration for employment, regardless of their qualifications and/or experience, solely on the basis of their race.

### **III. JURISDICTION AND VENUE**

12. This Court has jurisdiction pursuant to 28 U.S.C. §1331 and 1343 (Federal Question and Civil Rights).

13. Venue is appropriate in that all incidents, occurrences, and/or omissions alleged herein occurred within Fort Wayne, County of Allen, State of Indiana.

### **IV. CLASS ACTION ALLEGATIONS**

14. During the class period, the Plaintiffs inquired or otherwise applied for employment with the Defendant.

15. The Plaintiffs were fully qualified for the positions sought.

16. On information and belief, the Defendant hired several individuals for the open positions for which the Plaintiffs applied, all of whom were Caucasian.

17. Defendant routinely and systematically refused to employ African-Americans.

18. Defendant maintains a policy or a pattern of practice whereby African-Americans are targeted for non-selection.

19. On information and belief, Defendant maintains a secret policy whereby an identifying notation (either a "✓" or a "Z") is placed individually on the applications of all African-Americans.

20. The Defendant's policy of secretly marking applications of African-Americans is inherently discriminatory resulting in the discrimination of the Plaintiffs and other African-Americans who have applied for employment.

21. The Defendant's policy of denying consideration for employment to African-Americans is inherently discriminatory resulting in a chilling effect dissuading otherwise

qualified applicants from applying or pursuing employment opportunities with the Defendant.

22. The Defendant's preferential treatment of Caucasians and their hiring practices constitutes racial discrimination prohibited by Title VII.

23. The Defendant's policy and practice of excluding African-Americans from employment constitutes an interference with the Plaintiffs' employment relationship protectable under 42 U.S.C. §1981.

24. As a direct and proximate result of the Defendant's discrimination, the Plaintiffs and all Class members have suffered harm including, but not necessarily limited to, loss of back pay, front pay, and all other incidental benefits of employment.

25. The Defendant's conduct and/or gross negligence in maintaining a policy of discrimination constitutes the intentional and reckless violation of the Plaintiffs' constitutional rights and other federal laws giving the Plaintiffs protection, warranting an imposition of punitive damages.

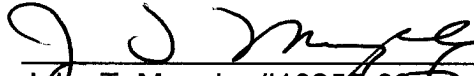
WHEREFORE, Plaintiffs pray that this Court designate this matter to be a proper class action, certify the Plaintiffs as class representatives under Rule 23(a) of the Federal Rules of Civil Procedure; to enter judgment in favor of the Plaintiffs and against the Defendant for pecuniary damages, compensatory damages, punitive damages, equitable and injunctive relief (where appropriate), reasonable attorneys' fees and costs and for all other available damages under the law and for all other relief just and proper in the premises.


**V. JURY DEMAND**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs  
hereby demand a trial by jury in this action.

Respectfully submitted,

BURT, BLEE, DIXON, SUTTON & BLOOM, LLP

  
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