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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

WASHINGTON STATE HUMAN
RIGHTS COMMISSION, presenting
the case in support of the complaint
filed by EDNA BURKE and
BARBARA BURKE-GLASCOCK,

Plaintiff,

v.

MERRILL GARDENS L.L.C.;
MERRILL GARDENS AT BURIEN,
LLC dba MERRILL GARDENS AT
BURIEN,

Defendants.

NO.

COMPLAINT

I. INTRODUCTION

1.1 Plaintiff Washington State Human Rights Commission (the Commission), by and through its attorney, Patricio A. Marquez, Assistant Attorney General, files this action against Defendants Merrill Gardens L.L.C. and Merrill Gardens at Burien, LLC, doing business as Merrill Gardens at Burien, to remedy unlawful discrimination in the rental of residential housing.

1.2 This is an action under the Washington Law Against Discrimination (WLAD) to correct unlawful and discriminatory housing practices, and to provide appropriate relief to prospective resident Edna Burke, now deceased, and her daughter and representative Barbara

1 Burke-Glascock, who were adversely affected by such practices. The Commission alleges that
2 the Merrill Gardens Defendants unlawfully discriminated against Ms. Burke, a member of a
3 protected class, by unlawfully requiring information about her medical condition and/or
4 disability as a term or condition of her application to reside at Merrill Gardens at Burien, in
5 violation of RCW 49.60.030(1)(c) and RCW 49.60.222(1)(b), and making statements that such
6 medical information was necessary before Defendants would agree to rent to Ms. Burke, in
7 violation of RCW 49.60.030(1)(c), RCW 49.60.222(1)(g), and WAC 162-38-110. When
8 Ms. Burke declined to provide the unlawfully requested information, the Commission alleges
9 that the Merrill Gardens Defendants further discriminated against her in violation of
10 RCW 49.60.030(1)(c) and RCW 49.60.222(1)(a) when they refused to rent to her.

11 **II. JURISDICTION AND VENUE**

12 **2.1** The Commission has jurisdiction to prosecute this case. RCW 49.60.030(2),
13 RCW 49.60.340(1)-(2). RCW 49.60.240(1)(c) requires the Commission to investigate housing
14 discrimination complaints, and if it makes a finding of reasonable cause to believe discrimination
15 has occurred, to seek relief for such discrimination. If, after a finding of reasonable cause, an
16 agreement to eliminate the unfair practice is not reached, the Complainant or Respondents may
17 elect to have the claims on which reasonable cause was found decided in a civil action in superior
18 court under RCW 49.60.030(2). RCW 49.60.340(1)-(2). After the Commission's reasonable
19 cause finding, Complainant made such an election.

20 **2.2** This Court has jurisdiction over this matter pursuant to RCW 49.60.340(2), as the
21 Commission has commenced this action within thirty days of Complainant's election to have the
22 claims herein decided in a civil action under RCW 49.60.030(2).

23 **2.3** The violations alleged in this Complaint were committed in whole or in part in King
24 County. Venue is thus proper in King County pursuant to RCW 4.12.020. Defendants transact
25 business in King County, such that venue is also proper in King County pursuant to RCW 4.12.025.
26

1 **III. PARTIES**

2 **3.1** Plaintiff is the Washington State Human Rights Commission.

3 **3.2** Defendant Merrill Gardens L.L.C. is a Washington for-profit, limited liability
4 company that owns and operates senior living communities.

5 **3.3** Defendant Merrill Gardens at Burien, LLC dba Merrill Gardens at Burien, is a
6 Washington for-profit, limited liability company that owns and/or operates the senior living
7 community known as Merrill Gardens at Burien.

8 **IV. FACTUAL ALLEGATIONS**

9 **4.1** Defendant Merrill Gardens L.L.C. is headquartered in Seattle, Washington. On
10 information and belief, Merrill Gardens L.L.C. owns and/or operates at least 33 senior living
11 communities in at least 9 states—Alabama, Arizona, California, Florida, Georgia, Missouri,
12 Nevada, South Carolina, and Washington. This includes at least 8 senior living communities in
13 Washington: Merrill Gardens at Auburn (18 1st Street SE, Auburn, WA 98002); Merrill Gardens
14 at Ballard (2418 NW 56th Street, Seattle, WA 98107); Merrill Gardens at Burien (15020 5th
15 Avenue SW, Burien, WA 98166); Merrill Gardens at First Hill (1421 Minor Avenue, Seattle,
16 WA 98101); Merrill Gardens at Kirkland (14 Main Street South, Kirkland, WA 98033); Merrill
17 Gardens at Renton Centre (104 Burnett Avenue S, Renton, WA 98057); Merrill Gardens at
18 Tacoma (7290 Rosemount Circle, Tacoma, WA 98645); and Merrill Gardens at The University
19 (5300 24th Avenue NE, Seattle, WA 98105).

20 **4.2** Defendant Merrill Gardens at Burien, LLC does business as Merrill Gardens at
21 Burien. Merrill Gardens at Burien offers independent living, assisted living, and memory care
22 services.

23 **4.3** Merrill Gardens at Burien has 126 apartments with a maximum occupancy
24 capacity of 252 residents. In addition to offering independent living, Merrill Gardens at Burien
25 is also licensed by the Washington Department of Social and Health Services to provide assisted
26 living care and services to approximately 45 adults.

1 **4.4** Merrill Gardens requires all persons seeking residency to undergo a “pre-
2 admission nursing assessment” and submit a “medical health statement” completed by their
3 doctor “to confirm they are appropriate for the community.” Merrill Gardens states that these
4 medical inquiries are required by state laws governing assisted living facilities. On information
5 and belief, this is the policy at each of the Merrill Gardens Defendants’ Washington properties.

6 **4.5** Merrill Gardens’ statements regarding the legal requirement for particular
7 medical inquiries are incorrect. Washington state regulations only require “preadmission
8 assessments” for “prospective residents” of “assisted living facilities,” as those terms are defined
9 by rule. *See* WAC 388-78A-2020 (defining “assisted living facility” and “prospective resident”);
10 WAC 388-78A-2060 (defining “preadmission assessments”). Individuals seeking to reside in an
11 independent living unit within an assisted living facility are not “prospective residents” subject
12 to the “preadmission assessment” requirement. *See* WAC 388-78A-2020 (defining “assisted
13 living” and “resident”).

14 **4.6** Washington state regulations also make clear that assisted living facilities “must
15 comply with all other applicable federal, state, county and municipal statutes, rules, codes and
16 ordinances, including without limitations those that prohibit discrimination.”
17 WAC 388-78A-2040.

18 **4.7** On or about June 3, 2016, Ms. Burke’s daughter and representative, Ms. Burke-
19 Glascock, contacted Merrill Gardens at Burien to inquire about Ms. Burke becoming a resident
20 there. At the time, Ms. Burke was residing at a similar senior living community in Bellevue,
21 Washington that offers independent living. Ms. Burke resided at the senior living community in
22 Bellevue in an independent living, two-bedroom apartment with private hire, live-in caregivers.

23 **4.8** Ms. Burke-Glascock was seeking to move her mother closer to her home in West
24 Seattle and was looking for the same living arrangement at Merrill Gardens—a two-bedroom
25 apartment, independent living unit, so that her mother could continue to reside with her private-
26

1 hire, licensed, live-in caregivers. According to Ms. Burke-Glascock, her mother’s caregivers
2 allowed Ms. Burke to live independently without assisted-living services.

3 **4.9** On or about June 7, 2016, Ms. Burke-Glascock visited Merrill Gardens and met
4 with Debbie Woodworth, the General Manager, and another employee. She explained that she
5 was interested in moving her mother into Merrill Gardens and was looking for an independent
6 living unit—a two-bedroom apartment so that Ms. Burke’s private-hire, independent live-in
7 caregivers could continue to live with and care for her. Ms. Woodworth asked why Ms. Burke
8 needed 24-hour care, and Ms. Burke-Glascock explained her mother’s medical condition and
9 disabilities.

10 **4.10** On July 29, 2016, Ms. Burke and Ms. Burke-Glascock signed a reservation
11 agreement for a two-bedroom apartment, #324, where Ms. Burke could reside with her personal
12 live-in caregivers in independent living status. The monthly apartment rental fee started at
13 \$5,495.00. Ms. Burke-Glascock also paid \$1,500.00 as part of the reservation fee to hold the
14 apartment.

15 **4.11** On November 15, 2016, Ms. Burke-Glascock attended a “Prepare for Your
16 Move” meeting hosted by Merrill Gardens. At the meeting, Ms. Woodworth provided meeting
17 attendees with a letter welcoming them to Merrill Gardens and advising them of a number of
18 forms that needed to be provided prior to move-in day. The letter states in relevant part, “[o]ur
19 community provides Independent Living, Assisted Living and Memory Care. All communities
20 that provide assisted living services are required to get a Medical Health Statement from the
21 resident’s doctor prior to move-in and to do an evaluation of each resident to confirm that they
22 are appropriate for the community.”

23 **4.12** The Medical Health Statement indicates: “Merrill Gardens takes pride in
24 providing quality assisted living services to our residents. Our license requires a health
25 examination by a licensed physician or nurse practitioner to assist in determining whether the
26 person is appropriate for care in our non-medical community. Your evaluation is important

1 because we do not provide skilled nursing care. Health exams are only valid if done within
2 60 days prior to a resident moving into the community. Please complete this form and, where
3 applicable, perform a Tuberculosis (TB) test. The following resident/patient authorizes release
4 of medical information to Merrill Gardens.”

5 **4.13** Ms. Woodworth verbally advised attendees at the meeting that, without the health
6 paperwork and medical assessment, prospective residents could not move in.

7 **4.14** These requirements did not sit well with Ms. Burke-Glascock, as the Bellevue
8 senior living community in which her mother was currently living had not required any “medical
9 health statement” or “pre-admission nursing assessment” before her mother was allowed to move
10 into that facility. Neither did it seem necessary or appropriate for someone who was going to
11 reside in an independent living unit.

12 **4.15** Ms. Burke-Glascock did some research to investigate her concerns. The
13 information she discovered, including from speaking with staff at the U.S. Department of
14 Housing and Urban Development (HUD) office in Seattle and the Washington Department of
15 Social and Health Services’ Residential Care Services unit, confirmed that Merrill Gardens could
16 not request medical information in connection with Ms. Burke’s application to reside in
17 independent living.

18 **4.16** On November 21, 2016, Ms. Burke-Glascock sent a letter to Ms. Woodworth
19 confirming that Ms. Burke had applied for “independent living occupancy” at Merrill Gardens
20 and had submitted a refundable deposit for “an independent living status,” unlicensed apartment
21 (unit #324)—not assisted living. In the letter, Ms. Burke-Glascock advised Ms. Woodworth that
22 Ms. Burke would “be declining the medical assessment and not provide unnecessary medical
23 information since Merrill Gardens Burien will not be providing licensed medical care services
24 to or for her.”

25 **4.17** On January 27, 2017, Ms. Woodworth advised Ms. Burke-Glascock by email
26 that, as discussed, “a Medical Health statement and nurse evaluation is part of [Merrill Gardens’]

1 move-in process I have reviewed your prior emails and requests with our corporate office
2 and we can't waive either the Medical Health statement or the nurse evaluation. We believe our
3 policies are in the best interest of all of our residents.”

4 **4.18** On February 17, 2017, Ms. Burke-Glascock sent an email to Ms. Woodworth
5 stating, “[o]ur position about the medical evaluation and medical health statement was outlined
6 in my letter to you November 21, 2016. Am I to conclude from your email to me Jan. 27, 2017,
7 that since my mother will not be completing either as there is no related need to do so (applying
8 for independent living with full-time private duty care giving services that negate the need for
9 facility services) that you and Merrill Gardens are denying her application for tenancy?”

10 **4.19** On March 3, 2017, Ms. Woodworth sent Ms. Burke-Glascock an email advising
11 her that, “our Merrill Garden standard is to require all potential residents to have a physician
12 completed Medical Health Statement and a Merrill Garden nurse evaluation. Since you have
13 refused to comply with these requirements we cannot accept [Ms. Burke] as a resident. If you
14 would like to reconsider your stance on the Medical Health Statement and nurse evaluation we
15 would be happy to consider [Ms. Burke] for resident status and move forward toward move-in.
16 If not, we will release apartment 324 and return your deposit and reservation fee.”

17 **4.20** On March 9, 2017, Ms. Woodworth advised Ms. Burke-Glascock by email that
18 Merrill Gardens would issue her a refund check.

19 **4.21** Ms. Burke and Ms. Burke-Glascock were harmed and suffered damages as a
20 result of the Merrill Gardens Defendants’ actions.

21 **4.22** In August 2017, Ms. Burke passed away.

22 **V. CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION**
24 **(Violation of the Washington Law Against Discrimination – Discrimination in the Terms**
25 **and Conditions for the Rental of Property)**

26 **5.1** The Commission re-alleges and incorporates by reference the allegations set forth
in each of the preceding paragraphs of this Complaint.

1 **5.2** Individuals have the right to be free from discrimination because of disability,
 2 including, but not limited to, the right to engage in real estate transactions without discrimination.
 3 RCW 49.60.030(1)(c).

4 **5.3** It is an unfair practice to discriminate against a person in the terms, conditions,
 5 or privileges of a housing/real estate transaction or in the furnishing of facilities or services in
 6 connection therewith because of disability. RCW 49.60.222(1)(b).

7 **5.4** Defendants unlawfully discriminated in the terms, conditions, and privileges of
 8 housing against Ms. Burke and Ms. Burke-Glascock by requiring a “medical health statement,”
 9 release of medical information, and “pre-admission nursing assessment” from Ms. Burke before
 10 Defendants would agree to rent an independent living unit to her, in violation of
 11 RCW 49.60.030(1)(c) and RCW 49.60.222(1)(b).

12 **SECOND CAUSE OF ACTION**

13 **(Violation of the Washington Law Against Discrimination – Discriminatory Statements)**

14 **5.5** The Commission re-alleges and incorporates by reference the allegations set forth
 15 in each of the preceding paragraphs of this Complaint.

16 **5.6** Individuals have the right to be free from discrimination because of disability,
 17 including, but not limited to, the right to engage in real estate transactions without discrimination.
 18 RCW 49.60.030(1)(c).

19 **5.7** It is an unfair practice to use a form of application to rent property, or to make a
 20 record or inquiry in connection with the prospective rental of property, which indicates, directly
 21 or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto.
 22 RCW 49.60.222(1)(g). This includes inquiring into matters personal to a disabled applicant
 23 beyond what is necessary and appropriate to the landlord-tenant relationship. WAC 162-38-110.

24 **5.8** Defendants unlawfully discriminated against Ms. Burke and Ms. Burke-Glascock
 25 by stating that a “medical health statement,” release of medical information, and “pre-admission
 26 nursing assessment” from Ms. Burke was necessary before Defendants would agree to rent an

1 independent living unit to her, in violation of RCW 49.60.030(1)(c), RCW 49.60.222(1)(g), and
2 WAC 162-38-110.

3 **THIRD CAUSE OF ACTION**
4 **(Violation of the Washington Law Against Discrimination – Discriminatory Refusal to**
5 **Rent Property)**

6 **5.9** The Commission re-alleges and incorporates by reference the allegations set forth
7 in each of the preceding paragraphs of this Complaint.

8 **5.10** Individuals have the right to be free from discrimination because of disability,
9 including, but not limited to, the right to engage in real estate transactions without discrimination.
10 RCW 49.60.030(1)(c).

11 **5.11** It is an unfair practice to refuse to rent property to a prospective tenant because
12 of a disability. RCW 49.60.222(1)(a).

13 **5.12** Defendants unlawfully discriminated against Ms. Burke and Ms. Burke-Glascock
14 when they declined to provide a “medical health statement,” release of medical information, and
15 “pre-admission nursing assessment” from Ms. Burke in order to be approved to rent an
16 independent living unit, and Merrill Gardens at Burien refused to rent to Ms. Burke, in violation
17 of RCW 49.60.030(1)(c) and RCW 49.60.222(1)(a).

18 **VI. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff Washington State Human Rights Commission prays that the
20 Court:

21 **6.1** Adjudge and decree that Defendants have engaged in the conduct complained of
22 herein.

23 **6.2** Adjudge and decree that Defendants’ conduct violated the Washington Law Against
24 Discrimination, including RCW 49.60.030(1)(c), RCW 49.60.222(1)(a)-(b) and (g), and
25 WAC 162-38-110.

26 **6.3** Enjoin Defendants from discriminating, imposing different terms and conditions
for the rental of housing, refusing to rent to individuals because of disability, and making,

1 printing, circulating, or posting statements, advertisements, or forms that indicate an intention to
2 make a limitation, specification or discrimination with respect to disability.

3 **6.4** Order other equitable relief which the Court finds necessary to eliminate the
4 effects of past discrimination, to prevent future discrimination, and to place Ms. Burke-Glascock
5 as close as possible to the position she would have been in but for the discrimination. This
6 includes retaining jurisdiction, if necessary, to fully effectuate this Court's order.

7 **6.5** Award damages or other appropriate monetary relief to Ms. Burke and
8 Ms. Burke-Glascock in an amount to be proven at trial.

9 **6.6** Assess a civil penalty against Defendants in the amount of \$10,000 pursuant to
10 RCW 49.60.225(1)(a).

11 **6.7** Award such other relief as the Court may deem just and proper.

12
13 DATED this 11th day of December 2020.

14
15 ROBERT W. FERGUSON
16 Attorney General

17 

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