

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

FRANK AYERS, et al.,

CASE NO. 05-CA-4120

Division 37

Plaintiffs,

vs.

FLORIDA DEPARTMENT OF
AGRICULTURE AND CONSUMER
SERVICES,

Defendant.

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Plaintiffs Frank Ayers, Cheryl W. Ayers, Jeffrey J. Enos, Denise B. Enos, Scott Fishman, Teresa A. Hanifan-Fishman, William J. Rogers, Jeanette B. Rogers, and Nancy I. Spears, on behalf of themselves and all others similarly situated (collectively "Plaintiffs"), through undersigned counsel, pursuant to Fla. R. Civ. P. 1.220, request entry of an order certifying this case as a class action and in support, state as follows:

1. This suit seeks to recover damages on behalf of Orange County property owners whose uninfected citrus trees were destroyed on or after January 1, 2000 by defendant Florida Department of Agriculture and Consumer Services and its Commissioner Charles A. Bronson (the "Department") in connection with its Citrus Canker Eradication Program ("CCEP"). Substantially similar countywide class action lawsuits are currently being prosecuted by undersigned counsel in Broward Circuit Court, Miami-Dade Circuit

Court, Palm Beach Circuit Court and Lee Circuit Court. Classes have been certified in each of these jurisdictions following contested evidentiary proceedings and affirmed on appeal.

2. Plaintiffs now seek class certification of this suit under Fla. R. Civ. P. Rule 1.220(a) and (b)(3). Given the substantial number of claimants, the existence of common issues of law and fact, the fact that Plaintiffs' claims are typical of all other members of the proposed class, and that common questions of law and fact predominate over questions affecting individual members of the class such that class representation is superior to other available methods for the fair and efficient adjudication of this controversy, class certification is appropriate and will facilitate the orderly and efficient resolution of this action.

3. Rule 1.220, Fla. R. Civ. P., provides that an action may be maintained as a class action if all of the prerequisites of Rule 1.220(a) are met, and at least one of the three conditions under Rule 1.220(b) are satisfied. This case meets all such prerequisites. The class is defined as follows:

All owners of citrus trees situated within Orange County, incorporated or otherwise, not used for commercial purposes, which have not been determined by the Department to be infected with citrus canker and which have been destroyed under the CCEP on or after January 1, 2000 (the "Class").

4. Pursuant to Rule 1.220(a), the Class is so numerous – consisting of thousands of Orange County property owners – that separate joinder is impracticable. Plaintiffs' claims raise questions of law and fact that are common to all members of the Class. Plaintiffs' claims are typical of the claims of Class members and are based on the same legal theories.

Finally, Plaintiffs and their chosen counsel will fairly and adequately protect the interests of the Class.

5. Pursuant to Rule 1.220(b)(3), questions of law and fact common to all members of the Class predominate over questions affecting individual members of the Class, such that class representation is superior to other available methods for the fair and efficient adjudication of this controversy. The Department has acted on grounds generally applicable to the entire Class, including the systematic removal and destruction of healthy citrus trees belonging to the Class without paying full or just compensation. Some of the common questions of law and fact which predominate over individual issues include:

- (a) Whether Defendants' systematic removal and destruction of the Class' healthy citrus trees without full or just compensation is contrary to law;
- (b) Whether the CCEP, which permits the removal and destruction of healthy citrus trees without notice and without full or just compensation violates due process; and
- (c) Whether Class members have sustained damages and the determination of the proper measure of such damages.

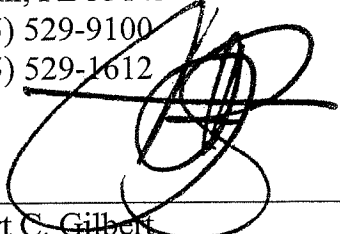
WHEREFORE, Plaintiffs request this Court certify this case as a class action pursuant to Rule 1.220, appointing plaintiffs Frank Ayers, Cheryl W. Ayers, Jeffrey J. Enos, Denise B. Enos, Scott Fishman, Teresa A. Hanifan-Fishman, William J. Rogers, Jeanette B. Rogers, and Nancy I. Spears as representatives of the Class, and appointing undersigned counsel as counsel for the Class, and for such further relief as this Court deems appropriate.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by U.S. Mail, to Wesley R. Parsons, Esq., Adorno & Yoss, LLP, 2525 Ponce de Leon Boulevard, Suite 400, Coral Gables, FL 33134, and I. William Spivey, II, Esq., Greenberg Traurig, P.A., 450 South Orange Avenue, Suite 650, Orlando, FL 32801, this 23 day of June, 2006.

Jamie Alan Cole
WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P. A
3107 Stirling Road
Suite 300
Fort Lauderdale, FL 33312
Tel: (954) 763-4242
Fax: (954) 764-7770

ROBERT C. GILBERT, P.A.
7301 SW 57 Court
Suite 515
South Miami, FL 33143
Tel: (305) 529-9100
Fax: (305) 529-1612

By: 
Robert C. Gilbert
Florida Bar No. 561861

William S. Williams
LYTAL, REITER, CLARK, FOUNTAIN
& WILLIAMS
10th Floor Northbridge Centre
515 North Flagler Drive
West Palm Beach, FL 33401
Tel: (561) 820-2205
Fax: (561) 832-2932

Michael J. Pucillo
BERMAN DEVALERIO PEASE TABACCO
BURT & PUCILLO, L.L.P.
222 Lakeview Avenue
Suite 900
West Palm Beach, FL 33401
Tel: (561) 835-9400
Fax: (561) 835-0322

Co-Counsel for Plaintiffs and the Proposed Class