

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

DAVID MENDEZ and LILLIAN
MENDEZ, on behalf of themselves and all
others similarly situated,

CASE NO. 02-13717 AJ

Plaintiffs,

vs.

FLORIDA DEPARTMENT OF
AGRICULTURE AND CONSUMER
SERVICES, et al.,

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART
MOTION FOR PARTIAL SUMMARY JUDGMENT
AS TO DEPARTMENT'S FIRST AFFIRMATIVE DEFENSE**

THIS MATTER came before the Court on June 16, 2006 on the motion of class representative plaintiffs David Mendez and Lillian Mendez, on behalf of themselves and the certified class (collectively the "Class") for partial summary judgment as to that portion of the Department's first affirmative defense asserting a right of set-off based on the Shade Florida Cards.¹ Having reviewed the motion and exhibits thereto, including the affidavit of Mike Gresham (the administrator of the Shade Florida program), other relevant portions of

¹ The Class is defined as:

All owners of citrus trees within Palm Beach County, incorporated or otherwise, not used for commercial purposes, which were not determined by the Department to be infected with citrus canker and which were destroyed under the CCEP from January 1, 2000 to the present.

the record, and having heard argument of counsel, the Court grants the motion in part and denies the motion in part as follows:

1. The Department's first affirmative defense to the Second Amended Class Action Complaint (hereafter the "Complaint") asserts that:

The Department is entitled to a set-off based on any collateral sources of payment to Plaintiffs or class members, including, but not limited to, insurance payments, tax benefits, Shade Dade or Shade Florida cards, State of Florida compensation payments, and grants to Florida counties for reforestation passed through to Plaintiffs or class members. (emphasis added).

2. The Department's first affirmative defense does not specify whether the claim for a set-off is based on the face amount of the Shade Florida Cards (\$100) issued to members of the Class or based on the actual amount of usage of such cards (i.e., based on the goods actually purchased with such cards) by members of the Class.

3. The Class argues the Department is not entitled to a set-off based on the face amount of the Shade Florida Cards (\$100) issued to members of the Class or the actual amount of usage of such cards (i.e., based on the goods actually purchased with such cards) by Class members.

4. The Department asserts it is entitled to a set-off based on: (i) the aggregate face value of all cards made available ("tendered") to the Class, regardless of whether members of the Class even completed and returned the applications requesting the cards; (ii) the face value (\$100) of all cards actually distributed to the Class, regardless of whether they

were used in whole, in part or not at all; and (iii) the actual amount of usage of the cards by members of the Class.

5. This Court disagrees with the Department's first and second positions. The Court concludes the Department is not entitled to a set-off based on: (i) the aggregate face value of all cards made available ("tendered") to the Class, regardless of whether Class members even completed and returned the applications requesting the cards; or (ii) the face value (\$100) of all cards actually distributed to the Class, regardless of whether they were used in whole, in part or not at all.

6. The Department may seek a set-off at trial based solely on the actual amount of usage of such cards (i.e., based on the goods actually purchased with such cards). The jury will be free to accept or reject the Department's set-off defense in whole or in part.

Accordingly, it is ORDERED AND ADJUDGED that the Class' motion for partial summary judgment as to that portion of the Department's first affirmative defense asserting a right of set-off based on the Shade Florida Cards is GRANTED in part. The Department is not entitled to a set-off based on: (i) the aggregate face value of all cards made available ("tendered") to the Class, regardless of whether Class members completed and returned the applications requesting the cards; or (ii) the face value (\$100) of all cards actually distributed to the Class, regardless of whether they were used in whole, in part or not at all. In all other respects, the Class' motion is DENIED.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, **SIGNED AND DATED**

Florida, this _____ day of July, 2006.

JUL 19 2006

JUDGE THOMAS H. BARKDULL III

Thomas H. Barkdull, III
Circuit Court Judge

Copies provided to:

- Robert C. Gilbert, Esq.
- Michael J. Pucillo, Esq.
- William S. Williams, Esq.
- Jamie Alan Cole, Esq.
- Wesley R. Parsons, Esq.
- Jerold I. Budney, Esq.

SIGNED AND DATED

JUL 19 2006

JUDGE THOMAS H. BARKDULL III

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