

IN THE CIRCUIT COURT OF THE 15<sup>TH</sup>  
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.

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**ORDER ON PLAINTIFFS' AMENDED MOTION FOR PARTIAL  
SUMMARY JUDGMENT OF LIABILITY AS TO COUNTS I AND III  
OF SECOND AMENDED CLASS ACTION COMPLAINT**

THIS CAUSE came before this Court on November 16, 2006 upon the Amended Motion for Partial Summary Judgment of Liability as to Counts I and III of Second Amended Class Action Complaint ("Motion"). Having reviewed the Motion and the opposing memorandum served by the Florida Department of Agriculture and Consumer Services and its Commissioner (collectively, the "Department"), heard argument of counsel and being otherwise fully advised in the premises, this Court ORDERS and ADJUDGES the Motion is GRANTED IN PART and DENIED IN PART as follows:

1. The Motion is GRANTED as to liability pursuant to Count III, the statutory claim brought under § 581.1845, Florida Statutes. Plaintiffs and the certified class' claims under Count III shall proceed solely on the issue of damages.

2. The Motion is DENIED as to liability with respect to Count I, the common law claim for inverse condemnation, based on the Department's affirmative defenses of public nuisance and superseding cause based on this Court's conclusion that there are material facts in dispute.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this \_\_\_\_ day of December, 2006.

DEC 06 2006

JUDGE THOMAS H. BARKDULL III

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Thomas H. Barkdull, III  
Circuit Court Judge

Copies provided to:

Counsel of Record

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