

1 BENJAMIN B. WAGNER
 United States Attorney
 2 BENJAMIN E. HALL (SBN 219924)
 Assistant United States Attorney
 3 United States Courthouse
 2500 Tulare Street, Suite 4401
 4 Fresno, California 93721
 Telephone: (559) 497-4000
 5 Facsimile: (559) 497-4099

6 Attorneys for Defendants

7
 8 **UNITED STATES DISTRICT COURT**
 9 **EASTERN DISTRICT OF CALIFORNIA**

10
 11 LEROY DEL DON JR.,) 1:10-cv-00126-AWI-GSA
)
 12 Plaintiff,) **SETTLEMENT STIPULATION;**
) **DISMISSAL; ORDER**
 13 v.)
)
 14 TOM VILSACK, in his official)
 capacity as United States)
 15 Secretary of Agriculture,)
 UNITED STATES DEPARTMENT OF)
 16 AGRICULTURE, UNITED STATES)
 DEPARTMENT OF AGRICULTURE)
 17 FOREST SERVICE, KAREN JO)
 CALDWELL, SUSAN SKALSKI,)
 18 KATHY HARDY, CHRISTINA WELCH,)
 and DOES 1 - 100 inclusive,)
 19 Defendants.)
 20)

21
 22 IT IS HEREBY STIPULATED by and between Plaintiff, Leroy Del
 23 Don, Jr. ("Del Don"), and federal defendants United States
 24 Department of Agriculture ("USDA"), United States Department of
 25 Agriculture Forest Service ("USDA Forest Service") and District
 26 Ranger Karen Jo Caldwell, in her official capacity (collectively
 27 "Federal Defendants"), as follows:
 28

1 1. The parties hereby agree to settle and compromise each
2 and every claim of any kind arising directly or indirectly from
3 the acts or omissions that gave rise to the above-captioned
4 action under the terms and conditions set forth in this
5 Stipulation.

6 2. Upon entry of the Court's Order on this Stipulation,
7 Defendant USDA Forest Service shall issue to Del Don a Special
8 Use Permit, to expire on June 1, 2010, for occupancy of the
9 residential residence on Lot 150 in the Pinecrest Tract,
10 Stanislaus National Forest, Summit Ranger District (the
11 "Temporary Permit"). The Temporary Permit shall authorize
12 pavement on the driveway not to exceed 22 feet in length,
13 measured from the northern edge of Rustic Road, in addition to
14 the other improvements authorized in the Special Use Permit
15 issued by the USDA Forest Service to Del Don on December 31,
16 2008. If pavement in excess of 22 feet is not removed from
17 National Forest System lands by June 1, 2010, the USDA Forest
18 Service will not issue a new recreation residence permit, and Del
19 Don will be required to vacate the premises and remove all
20 structures and improvements from the lot, except those owned by
21 the United States, and return the lot to a condition satisfactory
22 to the authorized officer, as required by the terms of Del Don's
23 last term permit which expired on December 31, 2008, and by 36
24 C.F.R. 251.60(h)(2)(i).

25 3. Prior to removal of the excess pavement, Del Don shall
26 mark the pavement at the place of the proposed cut and request
27 that District Ranger Karen Jo Caldwell inspect and approve the
28 location of the mark. District Ranger Caldwell shall approve the

1 mark if it is not more than 22 feet from the northern edge of
2 Rustic Road. During the course of removal of the pavement, Del
3 Don and his agents shall protect the scenic and esthetic values
4 of the National Forest System lands as far as practicable. Other
5 than negligible soil disturbance associated with removal of the
6 pavement, no soil, trees, or other vegetation may be removed from
7 National Forest System lands unless authorized in writing by
8 District Ranger Caldwell.

9 4. Provided that Del Don has complied with the requirement
10 to remove excess pavement from National Forest System lands by
11 June 1, 2010, as set forth in paragraph 2, as well as the other
12 terms and conditions of the Temporary Permit, Defendant USDA
13 Forest Service shall issue to Del Don a Term Special Use Permit,
14 to expire on December 31, 2028, for occupancy of the residential
15 residence (the "Term Permit"). The Term Permit shall authorize
16 Del Don to keep and maintain pavement on the driveway not to
17 exceed 22 feet in length, measured from the northern edge of
18 Rustic Road.

19 5. The Temporary Permit and the Term Permit shall include
20 the usual and customary terms and conditions applicable to
21 recreation residences in the Pinecrest tract. Nothing contained
22 in this Stipulation shall be construed to exempt Del Don from
23 compliance with any other term or condition of the Temporary
24 Permit and Term Permit.

25 6. Del Don waives and releases any claims, demands,
26 rights, and causes of action of any kind and nature related to
27 the subject matter that gave rise to this action, including
28 without limitation all claims against the Federal Defendants and

1 their officers, agents, employees and contractors, present and
2 former, in both their official and personal capacities. Del Don
3 is familiar with California Civil Code Section 1542 and expressly
4 waives and relinquishes all rights and benefits under this
5 Section and all similar laws. California Civil Code Section 1542
6 provides: "A general release does not extend to claims which the
7 creditor does not know or suspect to exist in his or her favor at
8 the time of executing the release, which if known by him or her
9 must have materially affected his or her settlement with the
10 debtor."

11 7. This Stipulation is not intended to be, and should not
12 be construed as, an admission of liability or fault on the part
13 of the USDA or its agents, servants, or employees, and it is
14 specifically denied that they are liable to Plaintiff. This
15 settlement is entered into for the purpose of compromising
16 disputed claims and avoiding the expenses and risks of further
17 litigation.

18 8. The parties agree that they will each bear their own
19 costs, attorney's fees and expenses.

20 9. The parties and their undersigned attorneys agree to
21 execute and deliver such other and further documents as may be
22 required to carry out the terms of this Stipulation.

23 10. Each person signing this Stipulation warrants and
24 represents that he or she possesses full authority to bind the
25 person(s) on whose behalf he or she is signing to the terms of
26 the Stipulation.

27 11. Each person signing this Stipulation warrants and
28 represents that no promises, inducements, or other agreements not

1 expressly contained herein have been made; that this Stipulation
2 contains the entire agreement between the parties; and that the
3 terms of this Stipulation are contractual and not mere recitals.
4 All prior oral understandings, agreements, and writings are
5 superseded by this Stipulation and are of no force or effect.

6 12. Each person executing this Stipulation represents that
7 he or she has read and understands its contents; that he or she
8 executes this Stipulation voluntarily; and that he or she has not
9 been influenced by any person acting on behalf of any party.

10 13. The above-captioned action is hereby DISMISSED WITH
11 PREJUDICE as to each and every one of the named defendants. Upon
12 approval by the Court as provided below, the Clerk of the Court
13 is requested to enter this dismissal in the official docket.

14 14. This Stipulation may be signed in one or more
15 counterparts, each of which shall be deemed to be an original and
16 all of which together shall constitute one and the same
17 instrument.

18 15. Notwithstanding the entry of a dismissal herein, the
19 parties hereby stipulate that this Court shall retain
20 jurisdiction to enforce the terms of this Stipulation.

21 Respectfully submitted,

22 Dated: April 23, 2010

BENJAMIN B. WAGNER
United States Attorney

23
24 By: /s/ Benjamin E. Hall
25 BENJAMIN E. HALL
26 Assistant U.S. Attorney
27 Attorneys for Defendants
28

1 Dated: April 21, 2010

UNITED STATES DEPARTMENT OF
AGRICULTURE FOREST SERVICE

2
3 By: /s/ Karen Jo Caldwell
KAREN JO CALDWELL
4 District Ranger
5 Summit Ranger District
Stanislaus National Forest

6 Dated: April 16, 2010

ARATA, SWINGLE, SODHI &
VAN EGMOND

7
8
9 By: /s/ Colleen F. Van Egmond
COLLEEN F. VAN EGMOND
10 Attorneys for Plaintiff

11
12 Dated: April 16, 2010

/s/ LeRoy Del Don, Jr.
13 LEROY DEL DON, JR.

14
15 ORDER

16 IT IS SO ORDERED.

17 Dated: April 26, 2010

/s/ Anthony W. Ishii
18 CHIEF UNITED STATES DISTRICT JUDGE