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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

vs. Plaintiff,

\$28,000.00 IN U.S. CURRENCY,

Defendants.

CASE NO. 10CV2378-LAB (CAB)
**ORDER RE: SPREADING OF
MANDATE**

While the attorney's fees motion was on appeal, the parties settled this action and claimant Robert Moser withdrew his motion. But instead of notifying the Ninth Circuit panel, he only notified this Court. Two days later, the Ninth Circuit, unaware that the appeal had become moot, issued its mandate. The court then required Moser to notify the Ninth Circuit about the settlement and withdrawal of the motion, and in particular to mention that this occurred during the pendency of the appeal, and he complied with the Courts' order over a week ago.

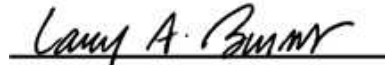
The Court has not yet ordered the spreading of the mandate. Because mootness was caused in part by Moser's withdrawal of the motion, the Ninth Circuit may vacate the mandate. *See generally, United States v. Payton*, 593 F.3d 881 (9th Cir. 2010). But because neither party has asked the panel to do that, it is unclear whether that will happen, or, if it does, when that might be.

1 In order to prevent this case from stagnating, the Court therefore directs that on
2 Monday, January 11, 2016 the Clerk spread the mandate — unless it has been vacated or
3 withdrawn by that time, or unless the Ninth Circuit indicates it is considering the issue.

4 Assuming that takes place, the Court will be unable to comply with the mandate,
5 because the case has now become moot. If this happens, the Court intends to order the
6 motion withdrawn, dismiss Moser’s claims as moot, and dismiss the case. If either Moser
7 or the government, or both, object to this, they should file a notice no later than Thursday,
8 January 7, 2016, so stating.

9 **IT IS SO ORDERED.**

10 DATED: December 9, 2015

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12 **HONORABLE LARRY ALAN BURNS**
13 United States District Judge

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