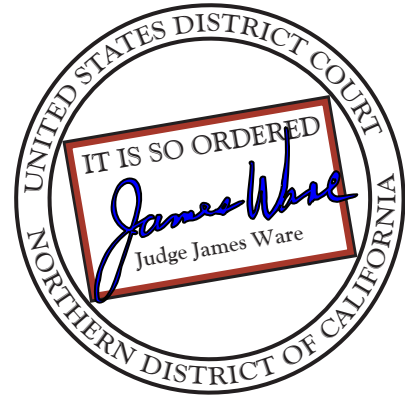1   TOMIO B. NARITA (SBN 156576)
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10   UNITED STATES DISTRICT COURT

11   NORTHERN DISTRICT OF CALIFORNIA

12   JOHN GORMAN,   )   CASE NO.: C-04-4507 JW
)
13   Plaintiff,   )   **JOINT CASE MANAGEMENT**
)   **CONFERENCE STATEMENT**
14   vs.   )
)   **AND ORDER VACATING CASE**
15   WOLPOFF & ABRAMSON, LLP;   )   **MANAGEMENT CONFERENCE**
     MBNA AMERICA BANK, N.A., and   )
16   Does 1 through 100, inclusive,   )
)
17   Defendants.   )
)

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1   Pursuant to this Court's Order dated February 4, 2009, plaintiff JOHN GORMAN

2   and defendant MBNA America Bank, N.A. ("MBNA") hereby submit the following Joint

3   Case Management Conference Statement:

4   On January 12, 2009, the United States Court of Appeals for the Ninth Circuit issued

5   its opinion affirming in part and reversing in part this Court's Order of June 23, 2006. *See*

6   *Gorman v. Wolpoff & Abramson, LLP*, 552 F.3d 1008 (9th Cir. 2009).

7   Pursuant to Federal Rule of Appellate Procedure 41(b), absent an order shortening or

8   extending the time, the Ninth Circuit's mandate "must issue 7 calendar days after the time to

9   file a petition for rehearing expires, or 7 calendar days after entry of an order denying a

10 timely petition for penal hearing, petition for rehearing en banc, or motion for stay of

11 mandate, whichever is later." The Ninth Circuit did not issue an order shortening or

12 extending the time for the issuance of the mandate.

13   On January 27, 2009, the Ninth Circuit issued an Order granting MBNA an extension

14 of time until February 25, 2009 to file a Petition for Panel Rehearing and Rehearing En

15 Banc. *See* Exhibit A, hereto.

16   On February 2, 2009, the Ninth Circuit issued an Order granting Gorman an

17 extension of time until February 25, 2009 to file a Petition for Panel Rehearing and

18 Rehearing En Banc. *See* Exhibit B, hereto.

19   On February 24, 2009, Gorman filed in the Ninth Circuit his Petition for Panel

20 Rehearing.

21   On February 25, 2009, MBNA filed in the Ninth Circuit its Petition for Panel

22 Rehearing and Rehearing En Banc.

23   Pursuant to Federal Rule of Appellate Procedure 41(d)(1), the "timely filing of a

24 petition for panel rehearing [or] petition for rehearing en banc . . . stays the mandate until

25 disposition of the petition . . . unless the court orders otherwise."

26   The Ninth Circuit has not yet ruled on the parties' Petitions for Panel Rehearing and

27 Rehearing En Banc, nor has it issued its mandate.

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1   Until the Ninth Circuit issues its mandate, this Court lacks jurisdiction over this

2   matter. *See Caldwell v. Puget Sound Apprenticeship & Training Trust*, 824 F.2d 765, 767

3   (9th Cir. 1987).

4   Accordingly, the parties jointly request that the Court vacate its February 4, 2009

5   Order and vacate the March 9, 2009 Case Management Conference, with the understanding

6   that a Case Management Conference will be reset upon issuance of an appropriate mandate

7   restoring jurisdiction to the District Court.

8

9   DATED: February 27, 2009   SIMMONDS & NARITA LLP
                                          TOMIO B. NARITA
10   JEFFREY A. TOPOR

11

12   By: /s/ Jeffrey A. Topor
                                                 Tomio B. Narita
13   Attorney for Defendants
                                                 Wolpoff & Abramson, L.L.P and MBNA
14   America Bank, N.A.

15

16   DATED: February 27, 2009   GORMAN & MILLER, PC
                                          JOHN C. GORMAN
17   CHARLES STIEGLER

18

19   By: /s/ John C. Gorman
                                                 John C. Gorman
20   Attorney for Plaintiff
                                                 John C. Gorman

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22   *** ORDER ***

23   In light of the parties' representation, the Court VACATES the Case Management Conference

24   currently set for March 9, 2009.   The Court will set another conference date once the mandate is

25   issued.

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27   Dated: March 3, 2009   _____
                                      JAMES WARE
28   United States District Court