

1 David B. Shemano (State Bar No. 176020)
2 PEITZMAN, WEG & KEMPINSKY LLP
3 10100 Santa Monica Blvd., Suite 1450
4 Los Angeles, CA 90067
5 Telephone: (310) 552-3100
6 Telecopier: (310) 552-3101

7 Marvin Wexler
8 Lawrence C. Fox
9 KORNSTEIN VEISZ WEXLER & POLLARD, LLP
10 757 Third Avenue
11 New York, NY 10017
12 Telephone: (212) 418-8600
13 Telecopier: (212) 826-3640

14 Attorneys for Creditors Blue Cross and Blue Shield of Alabama, Blue Cross and Blue Shield of
15 Massachusetts, Inc., Blue Cross and Blue Shield of Michigan, Blue Cross and Blue Shield of Nebraska,
16 Blue Cross and Blue Shield of North Carolina, Blue Cross and Blue Shield of Tennessee, Inc.,
17 CareFirst Blue Cross and Blue Shield, Empire Blue Cross Blue Shield, Excellus Health Plan, Inc. and
18 R.M.S.C.O., Highmark, Inc., Premera Blue Cross, Regence Blue Shield, Regence Blue Cross Blue
19 Shield of Utah, Regence Blue Cross Blue Shield of Oregon, and Regence Blue Shield of Idaho

20
21
22
23
24
25
26
27
28
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

16 In re
17 LARS ERIK HANSON,
18 Debtor.

Case No.: LA 08-10666-ER

Chapter 7

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION FOR
RELIEF FROM STAY**

Date: July 8, 2008

Time: 10:00 a.m.

Place: Courtroom 1568
255 E. Temple Street
Los Angeles, CA

23 Creditors Blue Cross and Blue Shield of Alabama, Blue Cross and Blue Shield of
24 Massachusetts, Inc., Blue Cross and Blue Shield of Michigan, Blue Cross and Blue Shield of Nebraska,
25 Blue Cross and Blue Shield of North Carolina, Blue Cross and Blue Shield of Tennessee, Inc.,
26 CareFirst Blue Cross and Blue Shield, Empire Blue Cross Blue Shield, Excellus Health Plan, Inc. and
27 R.M.S.C.O., Highmark, Inc., Premera Blue Cross, Regence Blue Shield, Regence Blue Cross Blue
28

1 Shield of Utah, Regence Blue Cross Blue Shield of Oregon, and Regence Blue Shield of Idaho
2 (collectively, the “Blue Plans”), hereby submit their Memorandum of Points and Authorities in support
3 of their motion for relief from stay to permit the continuation and conclusion to judgment of an action
4 against the above-captioned debtor (the “Debtor”) pending in the District Court for the Central District
5 of California.

6 7 **INTRODUCTION**

8 In March 2005, the Blue Plans filed a complex RICO/insurance fraud action, captioned *Blue*
9 *Cross and Blue Shield of Alabama, et al. v. Unity Outpatient Surgery Center, Inc. et. al.*, Case No. SA
10 CV 05-230-TJH (VBKx) (the “RICO Action”), against more than 50 defendants, including the Debtor,
11 in the United States District Court for the Central District of California.

12 Because the District Court is familiar with the facts in the RICO Action, and because the Blue
13 Plans’ case against the Debtor is interrelated with their case against the other defendants, common
14 sense, judicial efficiency and controlling law all dictate that the District Court should preside over the
15 RICO Action as against the Debtor. Therefore, the Blue Plans move for relief from the automatic stay,
16 so that their case against the Debtor can be litigated efficiently to conclusion before the District Court
17 in the RICO Action.

18 19 **THE PENDING COMPLAINT TO DETERMINE THE NONDISCHARGEABILITY** 20 **OF THE INSURANCE COMPANIES’ CLAIMS AGAINST THE DEBTOR**

21 On April 14, 2008, the Blue Plans filed their “Complaint To Determine Nondischargeability Of
22 Debts” against the Debtor (the “Nondischargeability Complaint”). Pursuant to the Nondischargeability
23 Complaint, the Blue Plans seek a determination that their claims against the Debtor are
24 nondischargeable pursuant to sections 523(a)(2) and (a)(6) of the Bankruptcy Code. A true and correct
25 copy of the Nondischargeability Complaint is attached as Exhibit A to the Declaration of Marvin
26 Wexler (the “Wexler Declaration”) and incorporated herein by this reference.
27
28

**THE BLUE PLANS SHOULD BE GRANTED
RELIEF FROM THE AUTOMATIC STAY TO PURSUE THE
RICO ACTION AS AGAINST THE DEBTOR TO CONCLUSION**

In order to establish that their claims are nondischargeable, the Blue Plans will be required to prove the allegations in the RICO Action. The RICO Action, which the Blue Plans filed in March 2005, asserts claims against the Debtor along with more than 50 other clinic owners, surgeons, and other co-conspirators who participated in a massive insurance fraud centered at 9 outpatient surgical clinics in Southern California. A true and correct copy of the complaint in the RICO Action (the “District Court Complaint”) is attached as an exhibit to the Nondischargeability Complaint attached as Exhibit A to the Wexler Declaration and incorporated herein by this reference.

As set forth in the District Court Complaint, the defendants in the RICO Action, including the Debtor, participated in what the California Insurance Commissioner has publicly described as “one of the most egregious, outrageous insurance fraud cases” in history. In summary, the defendants used patient recruiters to recruit patients from across the country to come to the clinics and undergo completely unnecessary diagnostic and surgical procedures, so that the clinics and the surgeons could submit phony insurance claims to the Plaintiffs for the unnecessary procedures.

To induce the patients to undergo the unnecessary procedures, the clinics (through the recruiters) offered the prospective patients either a cash payment for each unnecessary procedure the patient underwent, or promised the patient free or discounted cosmetic surgery after the patient submitted to multiple unnecessary procedures. The clinics and surgeons made the unnecessary procedures appear medically justified by concocting phony symptoms and diagnoses for the patients and incorporating those fake symptoms and diagnoses in fictitious medical records. The clinics and surgeons then cashed in by submitting fraudulent and inflated bills for the unnecessary procedures to insurers, using the bogus medical records as back-up if insurers questioned the necessity of the procedures.

A. The Debtor’s Participation In The Fraudulent Scheme.

The Debtor facilitated and profited from the fraudulent scheme. One of the corrupt clinics targeted in the District Court Complaint is Newport Superior Outpatient Medical Center (“Newport Superior”). The Debtor was the sole shareholder of Newport Superior Outpatient Medical Center, Inc.

1 (“Newport Superior Outpatient”), a corporation that nominally owned Newport Superior. The Debtor
2 was also a principal of Newport Superior Management Group, LLC (“Newport Superior
3 Management”), which actually owned and operated Newport Superior.

4 As one of the Debtor’s co-conspirators has already testified in criminal proceedings, the
5 Debtor’s sole ownership of Newport Superior Outpatient was a sham designed to evade California law.
6 Under California law, an outpatient surgery clinic must be owned entirely by physicians, and laypersons
7 are not permitted to own any interest. The Debtor was made the sole owner of Newport Superior
8 Outpatient to make it appear that a physician was the sole owner of the clinic. In truth, in a separate
9 undisclosed agreement, and as the Debtor well knew, Newport Superior Outpatient had contractually
10 ceded ownership and control of Newport Superior to Newport Superior Management, which was
11 largely owned by laypersons.

12 The Debtor was a principal actor and administrator in the fraud at Newport Superior, was fully
13 aware of the nature and extent of the fraud and how it operated, and personally and directly participated
14 in, and profited from, the fraud. Among other acts, and as detailed in the District Court Complaint, the
15 Debtor personally issued checks to patient recruiters for bringing patients to Newport Superior, which
16 was essential to the fraud and a crime in itself under California statutes. The Debtor knew that the bills
17 referenced in the District Court Complaint that Newport Superior issued to the Blue Plans for
18 diagnostic and surgical procedures, including gastrointestinal procedures, were false and fraudulent
19 because the patients did not have the symptoms or conditions represented, and the procedures were
20 completely unnecessary and medically unjustifiable. The Debtor also established a successor clinic to
21 Newport Superior at the same location called Harbor Multi-Specialty Surgery Center, which continued
22 to commit the same fraud under a different name in order to try to escape detection.

23 B. The District Court Is Familiar With The RICO Litigation And It Would Be Duplicative
24 To Litigate The Underlying Factual And Legal Issues In The Bankruptcy Court.

25 On May 3, 2005, the Debtor filed a motion to dismiss the claims filed against him. On August
26 8, 2005, the District Court denied the Debtor’s motion. Notwithstanding the commencement of his
27 bankruptcy case, the Debtor has not filed a notice of his bankruptcy case with the District Court and
28 has continued to participate in the District Court litigation since his bankruptcy filing, including filing an

1 answer in March 2008 to the District Court Complaint and serving responses in January 2008 to
2 discovery requests that were served prior to the commencement of the bankruptcy case.

3 District Judge Terry J. Hatter, Jr., is presently presiding over the RICO Action. Judge Hatter is
4 familiar with the facts of the case and has already issued important substantive and procedural rulings.
5 In fact, the RICO Action was transferred to Judge Hatter in April 2005 because Judge Hatter has
6 presided for many years over a very similar insurance fraud litigation, which action is captioned
7 *Connecticut General Life Insurance Company, et al. v. New Images of Beverly Hills, Inc., et al.*, Case
8 No. 99-08197 (TJH) (the "CIGNA Action").¹ Therefore, Judge Hatter has extensive experience with
9 the complicated legal and factual issues arising from the RICO Action.

10 On the other hand, if the claims against the Debtor were tried by this Court, this Court would
11 have to start from scratch and learn the particulars of the massive insurance scam in question, including
12 how the Debtor fits into the complex web of conspirators who comprise the RICO enterprises at issue
13 in the RICO Action. That exercise would require Blue Plans to present, and this Court to familiarize
14 itself with, details of the fraud and of the case that Judge Hatter already knows. The Blue Plans' claims
15 against the Debtor are closely related to, and partake of many of the same facts as, the Blue Plans'
16 claims against many of the more than 50 other defendants and 9 corrupt clinics in the RICO Action. In
17 light of the complexity and interrelatedness of the factual and legal issues that are being adjudicated in
18 the District Court, it would be wasteful and horrendously inefficient for any Judge other than Judge
19 Hatter to decide the Blue Plans' claims against the Debtor.

20 Furthermore, as a conspirator in a RICO enterprise, the Debtor is liable for the damages
21 resulting from the fraud committed by his conspirators. Therefore, litigation in this Court would not be
22 limited to whether the Debtor knowing and actively participated in a fraudulent scheme, but would
23

24 ¹ Numerous defendants in the CIGNA Action filed bankruptcy petitions in the Central District of
25 California. Relief from stay to proceed in the District Court was granted to the insurance company
26 plaintiffs in each case where relief was requested. *See, In re Sue Ann Alter*, Case No. SV-04-15464-
27 GM (Docket No. 96); *In re Asha Koorosh Amir-Jahed*, Case No. LA-02-42123-AA (Docket No. 43);
28 *In re Ata O. Montazeri*, LA-01-36198-BR (Docket No. 70); *In re All American Medical Group Inc.*,
Case No. LA-01-36194-BR (Docket No. 71); *In re Wilshire Outpatient Surgery Center*, LA-00-45280-
TD (Docket No. 148); *In re Hector Hernandez Arnazzi*, LA-00-31762-EC (Docket No. 108).

1 necessarily require proof of the numerous specific fraudulent acts committed by the conspirators that
2 are alleged in the District Court Complaint. Such litigation would essentially be a duplication of the
3 massive RICO Action pending in the District Court. Requiring a massive RICO litigation with more
4 than 50 defendants pending in the District Court to be litigated in the Bankruptcy Court simply because
5 one defendant filed a bankruptcy case would not only be the tail wagging the dog, but immensely
6 inefficient for all of the parties to the RICO Action and extremely time-consuming for this Court.

7 C. The Stay Should Be Lifted To Permit The Underlying Claims To Be Litigated To
8 Judgment.

9 Numerous cases recognize that the automatic stay should be lifted to allow a pre-existing
10 litigation to be resolved in a state or federal court in which it has been pending where the interests of
11 judicial economy will be served by allowing the case to conclude where it began. *See e.g., Christiansen*
12 *v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1169 (9th Cir. 1990) (bankruptcy
13 court abused its discretion by not lifting stay to permit 6 year-old state court litigation to be resolved in
14 state court); *First Jersey National Bank v. Brown (In re Brown)*, 951 F.2d 564, 570 (3d Cir. 1991)
15 (reversing denial of relief from stay where “[t]he state court is familiar with the background of the case .
16 . . [and] allowing the bankruptcy judge to step in at this point would result in duplication of effort and
17 added expense to the parties”); *Stranz v. Ice Cream Liquidation, Inc. (In re Ice Cream Liquidation,*
18 *Inc.)*, 281 B.R. 154, 166-67 (Bankr. D. Conn. 2002) (automatic stay lifted to allow 5 year-old federal
19 district court litigation to continue, because federal district court is “considerably more advanced on the
20 ‘learning curve’ with respect to the merits of this matter than is this court”); *In re Aquarius Disk*
21 *Services, Inc.*, 254 B.R. 253, 260 (Bankr. N.D. Cal. 2000) (“Judicial economy . . . would be served by
22 continuing litigation in the forum in which it has been pending since July 1998, thereby preserving
23 resources that have been expended to date”).

24 Here, this complex RICO Action has been pending in the District Court for an extended period
25 and the District Court is familiar with the underlying fraud at issue. The Blue Plans’ principal claims
26 against the Debtor are RICO claims, which are relatively common in the District Court but are rarely
27 adjudicated in Bankruptcy Court.

28 Under these circumstances, the Blue Plans submit that, as a matter of judicial economy, the

1 Bankruptcy Court should grant relief from the automatic stay to permit the Blue Plans to continue the
2 litigation against the Debtor in the District Court to judgment and to then return to the Bankruptcy
3 Court for a determination that their claims are nondischargeable pursuant to section 523(a) of the
4 Bankruptcy Code. *See, e.g. Austin v. Wendell-West Co.*, 539 F.2d 71 (9th Cir. 1976) (stay lifted to
5 permit plaintiff to proceed to judgment in state court and, after conclusion of state court proceeding,
6 bankruptcy court could determine issues of nondischargeability); *Ozai v. Tabuena (In re Ozai)*, 34 B.R.
7 764 (Bankr. 9th Cir. 1983) (stay lifted to permit plaintiff to proceed to judgment in state court, and
8 court extended time to file nondischargeability complaint until after completion of state court action);
9 *National Credit Union Administration v. Harris (In re Harris)*, 135 B.R. 434 (Bankr. S.D. Fla. 1992)
10 (stay lifted to permit plaintiff to proceed to judgment in district court, and nondischargeability
11 proceeding stayed pending completion of district court action); *In re Saunders*, 103 B.R. 299 (M.D.
12 Fla. 1988) (stay lifted to permit plaintiff to proceed to judgment in state court notwithstanding plaintiff
13 had filed complaint to determine nondischargeability of claims); *see also, Christensen v. Tucson*
14 *Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990) (bankruptcy court abused
15 discretion by not lifting stay to permit state court to resolve claim).

16 The Blue Plans should, therefore, be granted relief from the automatic stay pursuant to section
17 362(d)(1) of the Bankruptcy Code to proceed with the RICO Action to judgment against the Debtor,
18 and then return to this Court to pursue nondischargeability and judgment enforcement.

19 DATED: June 5, 2008

PEITZMAN, WEG & KEMPINSKY LLP

20 By: /s/ David B. Shemano
21 David B. Shemano

22 -and-

23 MARVIN WEXLER
24 LAWRENCE C. FOX
25 KORNSTEIN VEISZ WEXLER & POLLARD, LLP

26 Attorneys for the Blue Plans
27
28

PROOF OF SERVICE

1
2 STATE OF CALIFORNIA)
)
3 COUNTY OF LOS ANGELES)

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a
5 party to the within action; my business address is 10100 Santa Monica Boulevard, Suite 1450, Los Angeles,
California 90067.

6 On June 5, 2008, I served the document described as **MEMORANDUM OF POINTS AND**
7 **AUTHORITIES IN SUPPORT OF MOTION FOR RELIEF FROM STAY** on the parties listed on the
attached service list.

8 **BY MAIL.** By placing a true copy thereof in a sealed envelope and addressed to the parties with
9 postage thereon fully prepaid at Los Angeles, California and delivering it to the U.S. Postal Service at 10100
10 Santa Monica Boulevard, Los Angeles, California 90067.

11 **BY OVERNIGHT COURIER.** I caused an overnight courier service to deliver such envelopes to the
addresses of the parties on the attached service list on the next business day.

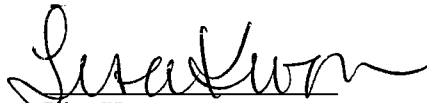
12 **BY PERSONAL SERVICE.** I delivered such envelope by hand to the following:

13 **BY ELECTRONIC MAIL.** I caused said document to be sent via electronic mail to the addressees as
14 indicated on the following:

15 **BY FAX.** I caused such documents to be transmitted via facsimile machine to the parties listed on the
16 attached Service List to the fax numbers set forth next to each party's name. Written confirmation of
17 transmission was received from the facsimile machine. The document transmitted did not exceed 15 pages
(excluding cover page) except with the express prior consent of the party receiving the transmission or by
18 court order.

19 Executed on June 5, 2008, at Los Angeles, California.

20 I declare under penalty of perjury that the foregoing is true and correct.

21 
22 Lisa Kwon
23
24
25
26
27
28

Service List
In re: Lars Erik Hanson
LA08-10666-ER
AD08-01391-ER

Debtor

Lars Erik Hanson
2670 Huntington Drive
San Marino, CA 91108

Counsel for Debtor

Sam X J Wu
23555 Golden Springs Dr Ste I
Diamond Bar, CA 91765

Chapter 7 Trustee

James L Brown
Law Offices of James L. Brown
3660 Wilshire Blvd., Suite 1118
Los Angeles, CA 90010

U.S. Trustee

United States Trustee
725 S Figueroa St., 26th Floor
Los Angeles, CA 90017